Supreme Court, U.S.
FILED

011061 JAN 16 2002

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No.

In the Supreme Court of the United States

PROGRAMMED LAND, INC., ET AL.,

Petitioners,

v.

PATRICK O'CONNOR, IN HIS CAPACITY AS TREASURER AND AUDITOR FOR HENNEPIN COUNTY, MINNESOTA, ET AL.,

Respondents.

Petition for a Writ of Certiorari to the Supreme Court of Minnesota

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Two Minnesota counties sent taxpayers illegally inflated property tax bills that were generated using rates that are now conceded to have been excessive. The bills and related notices directed to the taxpayers did not disclose the rates used by the counties in calculating the tax, and it is undisputed that taxpayers could not determine, from the information that was provided in the bills and notices, that erroneous rates had been used. The taxpayers paid the tax in reliance on the bills. When professional property tax auditors discovered the error and sought refunds on behalf of the taxpayers, the court below concluded that the statute of limitations for challenging the illegal taxes had expired before many of the taxpayers had even received their tax bills. Against this background, the questions presented are:

1. Whether a state regime for the refund of illegal taxes violates the Due Process Clause when taxpayers are not provided, prior to the running of the statute of limitations for filing a challenge, with notice from which they can determine that the taxes are illegal.

2. Whether tax officials violate the Equal Protection Clause when they erroneously tax some taxpayers at a higher rate than they tax other, identically situated taxpayers.

PARTIES TO THE PROCEEDING AND RULE 29.6 STATEMENT

In addition to those listed in the caption, the petitioners include: Susan M. Schuler, Gethsemane Evangelical Lutheran Church, H.J.H. Investment Co., James I. Davis, Gerald R. Baskfield, Joseph Garber, Gerald E. Holman, G.J. Smith, J.B. Smith, Paul M. Modell, Heritage Plaza Associates, R.A. Gassen, C.K. Gassen, Zimmerschied, Inc., Single Ply Systems, Inc., Wallace R. Pettit, BCV Properties, Glen Karlen, Peter Houser, William D. Townsend, Loren P. Tichy, N.A. Ternes & Associates, Randall Washington, Leslie J. Butman, PPG Partnership, My Bui Le, Paul Williams, R.J. Herman, L.A. Herman, Patricia R. Sims, P.M. Dean, P.C. Taykalo, Ashworth Properties, Microfacs, Brad Imes, Robert H. Engelhart, Apollo Piping Supply, Inc., Carl R. Lindstrom, Taaffe Investments, Inc., Timothy R. Murphy, R.L. Lewin, N.E. Lewin, Savoie Supply Company, Inc., Alan E. Segal, C&C Investments LLP, Roger W. Wothe, P. Dan Bilgert, D&M Properties, C&V Anderson, Hennen Enterprises, First Community Credit Union, L&C Koehnen, C.E. Bondhus, H&F Lamo, Henry B. Hayden, Hayne-Hyung J. Cho, E&C McDonald, Daniel E. Shebuski, Joseph Bevier, Rella Bevier, Fuel Oil Service Co., Inc., Twelve Properties, Inc., and Harold Christian. In addition to those listed in the caption, the respondents here include Thomas Novak, in his capacity as Treasurer and Auditor for Dakota County, Minnesota; the Dakota County Board of Commissioners; Dakota County, Minnesota; the Hennepin County Board of Commissioners; and Hennepin County, Minnesota.

The parties that are corporations have no parent companies and there is no company that owns 10% or more of the stock of any corporation that is a party.

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The opinion of the Minnesota Supreme Court (App., *infra*, 1a-28a) is reported at 633 N.W.2d 517. The opinion of the Minnesota Court of Appeals (App., *infra*, 29a-56a) is reported at 602 N.W.2d 895. The opinions of Minnesota District Courts for Dakota and Hennepin Counties (App., *infra*, 59a-97a) are unreported.

JURISDICTION

The judgment of the Minnesota Supreme Court was entered on October 29, 2001. App., *infra*, 98a-99a. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL, STATUTORY, AND REGULATORY PROVISIONS INVOLVED

The Due Process and Equal Protection Clauses of the Fourteenth Amendment provide: "nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT

This case raises issues concerning the constitutionality of the Minnesota regime for contesting the imposition of illegal taxes. The petitioners are property owners and taxpayers in two Minnesota counties who were entitled to – but did not receive – a reduced "class rate" for a portion of the value of their properties. Rather, the counties sent petitioners inflated property tax bills that were constructed using excessive rates. The bills and related notices directed to taxpayers did not disclose the rates used by the counties in calculating the tax, and it is undisputed that even the most inquisitive taxpayers could not determine from the information that was provided by the counties that erroneous rates had been used. When professional tax representatives finally discovered the error and

informed the taxpayers, the taxpayers' claims for refunds were held by the court below to be time-barred; the court concluded that the statute of limitations for challenging illegal taxes had expired *before many of the taxpayers had even received their tax bills*. Because this Kafkaesque holding denied the taxpayers any meaningful opportunity to contest the deprivation of their property and cannot be reconciled with clear decisions of this Court, further review is warranted.

1. The Statutory Tax Benefit that Petitioners Were Denied. The Minnesota property tax system is complex, but the error that gave rise to this suit is simple and undisputed. County tax officials assign all property to a specified class (*i.e.*, commercial, industrial, residential, and so on) and different classes of property are subject to tax at different "class rates" established by state statute. As we explain in more detail below, the class rates often become part of a more elaborate formula that is applied to calculate the tax due on each parcel of property. During the period at issue in this case, Minnesota law set the general class rate for certain industrial and commercial property at 5.06%, but also provided that landowners would get a more favorable rate of 3% on the first $100,000 of value of any one property per county. App., *infra*, 3a.[1] Taxing officials in Dakota and Hennepin Counties failed, however, to give thousands of taxpayers (who include the petitioners in this litigation) the benefit of the favorable rate, sending out tax bills calculated entirely on the basis of the higher 5.06% rate. Relying on the accuracy of these bills, the petitioners paid the full amount demanded. The court below thus found as to both jurisdictions that "[t]he counties applied the wrong class rates to [petitioners'] * * * property, and [petitioners], as a consequence, paid excess property taxes." *Id.* at 7a.

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[1] The favorable class rate varied somewhat over the tax years at issue, but this change has no bearing on the legal issues in the case. See Minn. Stat. § 273.13, subd. 24 (1989).

2. The Computation of the Tax. The Minnesota system for assessing and collecting property taxes has several stages that bear on the constitutional issues presented in this case. *First*, in an assessment process that begins in January of the year *preceding* the year in which the taxes will be paid, county assessors assign each parcel of property to the proper class, which determines the class rate that will be applied to it in calculating the tax. County assessors also determine the estimated market value of each parcel. Minn. Stat. § 273.01; App., *infra*, 10a. When this process is complete, in June of the year preceding the year in which the tax will be paid, assessors determine the aggregate "net tax capacity" of the tax district, which is the value of all property subject to tax multiplied by the various class rates applicable to individual parcels. Minn. Stat. § 274.04; App., *infra*, 9a-10a. In the example offered by the court below, "if a property was valued at $500,000 and is assigned to a class with a two percent class rate, the resulting net tax capacity of the property is $10,000 (.02 X [$]500,000 = [$]10,000)." App., *infra*, 10a n.7. This net tax capacity figure is "the percentage of a property's estimated market value that is subject to taxation." *Id.* at 10a.

Second, in the fall of the year preceding payment, the process moves into the "levy" phase. During this period, the State's various taxing districts (*e.g.*, counties, school districts, library boards) set their budgets. Those budgets establish the total amount of property tax revenue each district will require in the coming year to support government operations. If the taxing district's budget will exceed the jurisdiction's aggregate net tax capacity – as was true of both counties during the tax years involved in this litigation – the district will raise the necessary revenue by proportionately "extending" the various class rates so that, when multiplied by the value of property in the jurisdiction, these so-called "extension rates" will yield the requisite amount. With that information in hand, the county auditor calculates the amount of tax actually due on each parcel

of property by multiplying the parcel's estimated value by the applicable class rate, and then by multiplying this figure by the applicable extension rate. See Minn. Stat. § 275.08; App., *infra*, 10a.[2] In practice, this process will take on additional complexity because there are likely to be *several* taxing jurisdictions (*e.g.*, county, city, library board) applying their separate local extension rates to a single parcel of property.

Third, individual tax bills are then sent to taxpayers. The county auditor or treasurer does not send the bills until mid-March of the year in which the tax is due and need not send them until March 31 of that year. Minnesota law requires county auditors to charge taxpayers "the proper amount of taxes." Minn. Stat. § 274.09. Consequently, taxpayers have a right to rely upon the correctness of these bills. See *Cooperative Power Ass'n* v. *Astleford*, 386 N.W.2d 313, 315 (Minn. Ct. App. 1986). Taxpayers must pay the first half of their property taxes by May 15 and the remainder by October 15. If they do not, the counties automatically impose stiff penalties and interest charges on any delinquent taxes. Minn. Stat. § 279.01.

3. The Notices Received by Taxpayers. During the course of this process taxpayers receive three notices from county

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[2] Imagine, for example, that a county has an aggregate net tax capacity (*i.e.*, the valuation of all taxable property in the county multiplied by the class rates applicable to particular parcels) of $1 million and that the statutory class rate applicable to commercial property is 1%. The county determines that it must levy $1.5 million, or 50% more than its net tax capacity. To accomplish this, the county will extend the various class rates by 50%, which will generate an extension rate applicable to commercial property of 1.5%. Under this rate, a parcel of commercial property valued at $100 will be subject to a tax of $1.50. Of course, if the county begins by using an inflated class rate, it will end with an inflated extension rate and an excessive tax.

taxing officials. It was undisputed below that none of these notices states – or gives taxpayers information from which they would be able to determine – the class rates that are used to calculate their tax. See App., *infra*, 7a.

- Valuation notices sent to property owners in February of the year preceding payment of the tax state the property's classification (*e.g.*, commercial, industrial, residential) and estimated value, but contain no information regarding the class rates applicable to the parcels. See *id.* at 20a.

- In November of each year taxpayers receive a "truth-in-taxation statement," which also contains classification and valuation information, as well as an *estimate* of the tax that will be owed on the taxpayer's parcel; the estimate is calculated on the basis of local extension rates that have been proposed but not yet adopted. App., *infra*, 20a; Minn. Stat. § 275.065. These estimate notices likewise do not indicate the class rates used as the basis for generating the extension rates. Nor is the underlying class rate ascertainable from the information that is provided, because the bottom-line total on the estimate is a single figure that does not identify the local extension rates or provide details from which the class rate used to calculate the extension rate can be "reverse engineered" by the taxpayer. See R.A. 15.[3]

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[3] As a practical matter, it would be impossible for a taxpayer to determine the class rates used in calculating the tax from the information that is provided in these notices. Such a determination would require the taxpayer to determine the total amount of tax being levied, the valuation of the parcels in the varying classification categories subject to tax, and the different class rates that should have been applied to those categories. From that starting point, the taxpayer would have had to develop a complex algorithm that could be used to determine the extension rates applied to the various

- Finally, the tax bills themselves repeat the information relating to classification and valuation; they also state the total tax allegedly due. App., *infra*, 20a; Minn. Stat. § 276.04. As with the notice of estimated tax, however, the final bill does not report the class rate applied. And, as also is true of the estimated tax notice, the final bill does not allow a taxpayer to determine the class rate used to calculate the tax because the bill does not separate out amounts attributable to the class and local extension rates. The court below thus found it uncontroverted that "the notices did not contain information from which [taxpayers] could determine that the counties applied the wrong class rate." App., *infra*, 7a.

4. Petitioners' Efforts to Obtain Refunds of the Overpayments. The principal statutory means for Minnesota taxpayers to challenge errors in *assessment and classification* of property is the cause of action provided by Minn. Stat. § 278.01. The deadline for filing complaints under this statute is March 31 of the year in which the tax payment is due. Minn. Stat. § 278.01, subd. 1. As has been noted, taxpayers are provided with notice of their proposed property *valuation* and *classification* at least one year in advance of this deadline for filing an assessment challenge. Because tax bills are not sent until mid-March of the year in which the tax is due and need not be sent until March 31 of that year, however, the statutory deadline for filing a § 278.01 challenge to an excessive class rate often *has expired* before taxpayers receive their tax bills,

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categories of property, and would then have had to "back out" from this figure the class rates that underlay the extension rates. Against this background, it is unsurprising that the counties have never contended that taxpayers could have identified the class rate error from the notice provided.

and in the best of circumstances will expire only days after receipt of the bill.

As the court below noted, the material facts of this case, which involves challenges to application of an excessive property tax class rate in two Minnesota counties, are not in dispute. App, *infra*, 7a. In Hennepin County, tax officials failed to give petitioner Programmed Land and at least 1668 other taxpayers the benefit of the favorable class rate applicable to certain industrial and commercial properties for fifteen years (including the six years for which taxpayers sought refunds), although it appears that the county assessor had been aware for years that the rate was being misapplied as to thousands of taxpayers. App., *infra*, 4a-5a; R.A. 16-20.[4] When professional tax representatives finally discovered the error in September 1996 and requested relief on behalf of the taxpayers, county tax authorities corrected the mistake only prospectively. Hennepin County tax officials chose not to adjust 1996 tax bills for at least 1600 business owners who had not yet remitted the second half of their 1996 taxes, in the process keeping $3.2 million in overpayments. All told, it appears that Hennepin County collected, through application of the improper rate, at least $50 million in excess taxes from those taxpayers who were erroneously charged the higher rate.[5]

Similarly, Dakota County failed in 1993 and 1994 to apply the lawful rate to property owned by petitioner Harold Christian. An independent tax representative who was reviewing Dakota County records discovered the error in 1994 and informed Mr. Christian. When he complained, the county

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[4] This prompted the court below to acknowledge that "there is some indication in the record that the assessors had difficulty in applying the reduced class rate." App., *infra*, 22a.

[5] Petitioners' refund claims encompass, at most, less than half the total amount overbilled by the county.

refunded the 1994 overpayment but refused to provide relief for the 1993 tax year. App., *infra*, 3a-4a. The County also chose not to adjust the 1993 or 1994 tax bills of at least 650 similarly situated taxpayers, allowing it to retain at least $2,600,000 in overpayments.

By the time the taxpayers in the two counties learned of these errors – which, the court below acknowledged, could not be determined from their tax bills (App., *infra*, 7a) – the period for filing a challenge pursuant to Minn. Stat. § 278.01 had long since passed. Petitioners therefore initiated separate suits in the two counties, seeking to proceed under common law and other statutory causes of action. The counties and county taxing officials (respondents in this Court) sought to avoid liability on the ground that Minn. Stat. § 278.01 provides the exclusive remedy for overpayment of property taxes and that petitioners' failure to invoke that statute prior to expiration of the statutory deadline precluded relief.

*5. **Decisions Below.*** Both trial courts ruled for the taxpayers. App., *infra*, 57a-97a. Finding that misapplication of the class rate "does not fall under the scenarios envisioned by the legislature when it enacted Minn. Stat. § 278.01" (App., *infra*, 73a) and that the provision accordingly cannot be the exclusive remedy for misapplication of class rates, the Dakota County court held that Mr. Christian "justifiably" relied on the tax bill sent by the county, that county tax authorities have "no right to retain what is not theirs," and that the county therefore was obligated "to disgorge the overpayments made to it." *Id.* at 74a-75a. Similarly, the Hennepin County court explained that "[e]ssentially the Defendants have applied a classification that does not exist in the statute to the financial detriment of Plaintiffs[], failed to notify the Plaintiffs of this classification, improperly taxed plaintiffs on this classification, and now claim that the only recovery available was to have contested their classification within one year." *Id.* at 86a. The court went on

to hold that Minn. Stat. § 278.01 is not the exclusive remedy available to taxpayers in such circumstances, certifying a class of taxpayers who were entitled to seek relief pursuant to other statutory or common law causes of action. App., *infra*, 91a-97a.

On appeal, the Minnesota Court of Appeals consolidated the cases and affirmed both judgments, holding that Minn. Stat. § 278.01 was not applicable to petitioners' claims. App., *infra*, 29a-56a. In doing so, the court noted that petitioners, "who relied on the accuracy of their property tax bills and paid the full amounts within the time prescribed by law, were not informed of the errors in the application of the tax rate." App., *infra*, 31a.

A closely divided Minnesota Supreme Court reversed. App., *infra*, 1a-28a. The majority acknowledged that

> [t]he counties applied the wrong class rates to [petitioners'] * * * property, and [petitioners], as a consequence, paid excess property taxes. The counties provided [petitioners] with proper notice of their estimated and final property tax, but the notices did not contain information from which [petitioners] could determine that the counties applied the wrong class rate.

App., *infra*, 7a. The majority also recognized that, "[b]y its plain terms, section 278.01 does not provide a cause of action for all possible challenges to property taxes." *Id.* at 9a. Having made that observation, however, the court went on to hold that § 278.01 *does* provide Minnesota's exclusive remedy for undisclosed misapplications of class rates by taxing authorities, meaning that petitioners' failure in this case to file a complaint

prior to expiration of § 278.01's March 31 deadline precluded refund relief. App., *infra*, 10a-17a.[6]

The court rejected petitioners' argument that this construction of § 278.01 failed to provide a meaningful remedy for the imposition of illegal taxes and therefore denied them due process. Although the court acknowledged that the statutory filing deadline expired simultaneously with – or prior to – the taxpayers' receipt of their tax bills, it reasoned that "the misapplications of class rates occurred and were 'knowable' before the March 31 deadline." App., *infra*, 17a n.10. In particular, the court pointed to the "truth in taxation" notice of estimated tax that is sent to taxpayers "several months" before expiration of the § 278.01 deadline. App., *infra*, 20a-21a. Although this notice does "not for practical purposes inform [taxpayers] that the wrong class rate was applied" (*id.*, at 20a), the court held that a constitutionally adequate

> notice need not expressly identify every factor and decision that went into the determination of the estimated or final tax on the parcel. The taxpayer may not know for certain

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[6] Section 278.01 provides in relevant part that a taxpayer may bring a challenge alleging that "property has been partially, unfairly, or unequally assessed in comparison with other property * * *, or that the parcel has been assessed at a valuation greater than its real or actual value, or that the tax levied against the same is illegal, in whole or in part." Petitioners argued below as a matter of state law that the statute is addressed only to errors by the assessor in the discretionary acts of assigning property to a particular class or estimating its value, or to challenges to the imposition of the tax levy by a taxing district; the taxpayers' position was that the statute did *not* apply to the mechanical act of multiplying the property's estimated value by the statutorily determined class rate. That reading of § 278.01 was accepted by the trial courts, by the court of appeals, and by the dissent below, but was rejected by the majority of the Minnesota Supreme Court.

> whether the estimated tax is lawful or correct by looking at the notice, but the taxpayer is on notice that a tax of an estimated amount will be levied according to the stated value of the property. * * * The notice of the estimated tax gives the taxpayer adequate notice from which to inquire as to the basis of the tax and then challenge it if the taxpayer believes it was calculated improperly.

Id. at 21a. The court therefore concluded that the Minnesota scheme comports with the requirements of due process. *Id.* at 21a-22a.

The court also rejected petitioners' argument that the counties' tax collection process denied them equal protection because it subjected them to higher class rates than were used to calculate the taxes of other, identically situated property owners. The court was of the view that petitioners could make out an equal protection violation only by demonstrating that the "disparity between the taxpayer's assessment and the assessment of similarly situated properties was the result of intentional or arbitrary or systematic discrimination." App., *infra*, 22a. From that starting point, the court held that "[w]here, as here, the differential treatment is alleged to arise only from bureaucratic errors, the standard of intentional, arbitrary or systematic discrimination necessary to prove a violation of equal protection rights is not satisfied." *Id.* at 23a. Having thus rejected the equal protection argument on the merits, the court did not reach the question whether petitioners had a cause of action other than § 278.01 that could be used to advance their equal protection claim.

Justice Stringer, joined by Justices Page and Gilbert, dissented. App., *infra*, 23a-28a. They read the Minnesota Supreme Court's precedents to preclude a holding that Minn. Stat. § 278.01 could be used to challenge the misapplication of class rates. *Id.* at 23a-26a. They also observed that "[i]f, as the majority holds, misapplication of a class rate is [challengeable

under § 278.01], and therefore the March 31 challenge deadline applies under 278.01, the taxpayer may not even know of the misapplication until the very day the tax notice is received. Applying the statute of limitations set forth in section 278.01 to a claim that becomes knowable on the very date of expiration is an 'absurdity too gross to be insisted on.'" *Id.* at 26a (quoting *Marbury* v. *Madison*, 5 U.S. (1 Cranch) 137, 177 (1803)). The dissent added that "[t]he taxpayers here were * * * entitled to rely on the several property tax statements and assume that the assessors and auditors had properly discharged their duty and applied the correct class rates." *Id.* at 27a.

REASONS FOR GRANTING THE PETITION

This Court has "previously struck down as a violation of due process a state court's decision denying an individual taxpayer any practicable opportunity to contest a tax." *Richards* v. *Jefferson County*, 517 U.S. 793, 803 (1996). Yet that is precisely what occurred here. To be sure, the counties sent petitioners notices and tax bills stating the total amount of tax supposedly due, and Minnesota has a statute on its books that purports to provide for tax refunds. But in the circumstances of this case, these illusory protections provided the "mere form" of due process (*id.* at 803) because no reasonable and ordinarily diligent taxpayer could have hoped to mount a successful challenge to the counties' undisclosed overbilling prior to expiration of the statute of limitations governing Minn. Stat. § 278.01 petitions. The decision below upholding this regime plainly misstated the requirements of the Due Process Clause and departed from this Court's precedents.

At the same time, the Minnesota Supreme Court committed a serious error in its application of the Equal Protection Clause. That court was of the view that the counties' error here was not "intentional, arbitrary or systematic." But it is undisputed that the counties effectively – and for no reason at all – placed identically situated taxpayers into two categories, giving some

favorable and some unfavorable rates. That certainly appears to be the "very essence of arbitrary state action." *Logan* v. *Zimmerman Brush Co.*, 455 U.S. 422, 442 (1982) (opinion of Blackmun, J.). The Minnesota court's contrary conclusion cannot be squared with this Court's holdings and warrants further review.

I. THE COUNTIES' FAILURE TO PROVIDE NOTICE THAT WOULD HAVE ALLOWED REASONABLE TAXPAYERS TO DISCOVER THE WRONGFUL DEPRIVATION OF PROPERTY PRIOR TO EXPIRATION OF THE STATUTE OF LIMITATIONS DENIED TAXPAYERS DUE PROCESS

At the outset, it seems undeniable that the decision below is inconsistent with fundamental requirements of due process. The counties demanded that petitioners pay amounts in tax that were unlawfully excessive but gave petitioners no information by which it could be determined that the demand was excessive. And once petitioners paid in response to this demand, the Minnesota Supreme Court held, it was too late for them to seek relief because the time to file a challenge had expired *before* many petitioners even received their tax bills. As this Court put it in very similar circumstances, "[i]t is plain that the practical effect of the [Minnesota court's] judgment * * * is to deprive the plaintiff[s'] * * * property without affording [them] at any time an opportunity to be heard in [their] defense." *Brinkerhoff-Faris Trust & Savings Co.* v. *Hill*, 281 U.S. 673, 678 (1930) (Brandeis, J.). That outcome cannot be reconciled with this Court's clear holdings.

1. The relevant due process principles are beyond reasonable dispute. As a general matter, "there can be no doubt that at a minimum [due process] require[s] that deprivation of life, liberty or property * * * be preceded by notice and an opportunity for hearing appropriate to the case." *Mullane* v. *Central Hanover Bank & Trust Co.*, 339 U.S. 306, 313 (1950).

Due process "in its primary sense" thus mandates that the deprivation of property not become final until the property's owner is afforded "an opportunity to be heard and to defend its substantive right" (*Brinkerhoff-Faris*, 281 U.S. at 678) – an opportunity that must be provided "'at a meaningful time and in a meaningful manner.'" *McKesson Corp.* v. *Division of Alcoholic Beverages & Tobacco*, 496 U.S. 18, 39 n.22 (1990) (quoting *Mathews* v. *Eldridge*, 424 U.S. 319, 333 (1976)) (internal quotation marks omitted)). As a consequence, when the state has not offered a pre-deprivation opportunity to contest the taking of property, "the Due Process Clause of the Fourteenth Amendment obligates the State to provide meaningful backward-looking relief to rectify any unconstitutional deprivation." *Id.* at 31 (footnote omitted).

Unfortunately, state taxing authorities and courts have proved most reluctant to accept this principle in recent years, giving the Court repeated occasion to address the applicability of due process requirements in the setting of illegal taxes. In doing so, the Court has explained that, "[b]ecause the exaction of a tax constitutes a deprivation of property, the State must provide procedural safeguards against unlawful exactions in order to satisfy the commands of the Due Process Clause." *McKesson*, 496 U.S. at 36 (footnote omitted). This means that

> the State must provide taxpayers with, not only a fair opportunity to challenge the accuracy and legal validity of their tax obligations, but also a "clear and certain remedy," * * * for any erroneous or unlawful tax collection to ensure that the opportunity to contest the tax is a meaningful one.

Id. at 39 (citation and footnote omitted). See also *id.* at 32.[7] This procedure must be calculated to give the "reasonable" or "average" taxpayer a meaningful opportunity to contest an unlawful tax. *Reich* v. *Collins*, 513 U.S. 106, 111 (1994). See *Newsweek, Inc.* v. *Florida Dep't of Revenue*, 522 U.S. 442, 443-444 (1998).

These tax holdings involved an application of the broader due process principle recognized in related decisions: that the availability of procedures to forestall the deprivation of property "has little reality or worth" unless the person who will suffer the deprivation is given adequate notice. *Mullane*, 339 U.S. at 314. As the Court's leading decision on the point explains in the context of adjudicative and similar proceedings, due process requires the state to offer "notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Ibid.* This "notice must be of such nature as reasonably to convey the required information, * * * and it must afford a reasonable time for those interested to make their appearance." *Ibid.* See *id.* at 315; *Richards*, 517 U.S. at 799; *Walker* v. *City of Hutchinson*, 352 U.S. 112, 117 (1956).

2. This case lies squarely at the intersection of these lines of authority. As we have explained, it is undisputed that the counties did not offer *any* information that would put reasonable taxpayers on notice that an incorrect class rate was being applied, or that would allow even the most inquisitive taxpayers to determine for themselves the rate actually used to calculate their tax bills. Taxpayers who consulted the relevant

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[7] See generally *Ward* v. *Board of County Comm'rs*, 253 U.S. 17, 24 (1920) (holding that, "if a county obtains the money or property of others without authority, the law, independent of any statute, will compel restitution or compensation") (internal quotation marks and citation omitted).

Minnesota statute would have found the class rate that *should* have been applied to their properties, but would have had no way of knowing that tax officials actually used (or planned to use) a different, incorrect rate in generating the tax bills. Yet taxpayers surely may "reasonably rel[y]" on the presumption that tax officials will use correct rates when issuing demands for payment. *Newsweek*, 522 U.S. at 445.

In holding to the contrary, the court below found it crucial that taxpayers received a notice of estimated tax "several months" before expiration of the March 31 deadline for filing a challenge, reasoning that this "truth-in-taxation" statement "gives the taxpayer adequate notice from which to inquire as to the basis of the tax and then to challenge it if the taxpayer believes it was calculated improperly." App., *infra* 21a. But it is, again, undisputed that this statement of estimated tax offered taxpayers *no* relevant information at all: the statement – which purported to give only a projection of taxes that would be billed, and that was generated using proposed but not-yet finalized local extension rates – did not indicate *and could not be used by an enterprising taxpayer to calculate* the class rate that tax officials intended to use in preparing tax bills. See page 5, *supra*.

In ruling that the truth-in-taxation statement provided constitutionally adequate notice, the Minnesota Supreme Court thus effectively held that taxpayers must be deemed to be on a sort of perpetual inquiry notice as to whether local tax officials are lawfully performing their duties – and that taxpayers forfeit any opportunity to challenge unlawful class rates unless, *prior to receipt of their final tax bill and without any reason at all to believe that tax officials plan to use an improper rate*, they contact their local tax department, inquire as to the rate that will be used in calculating their bill, and file suit to challenge any

error.[8] As this Court recognized in closely analogous circumstances, "no reasonable taxpayer would have thought" to take such steps. *Reich*, 513 U.S. at 111. This necessarily means that the taxpayers here did not have a "fair opportunity to challenge the accuracy and legal validity of their tax obligations." *McKesson*, 496 U.S. at 39.[9]

This deprivation of due process was not cured by distribution of final tax bills in March of the tax payment year. These bills too provided no information from which the class rate used to generate the tax demand could be determined. See page 6, *supra*. And even if the bills somehow could have been deconstructed to yield that rate, taxpayers did not receive them until just before – or in many cases after – the time for filing a

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[8] Among other things, this holding presumes that local tax officials will act forthrightly when approached by taxpayers regarding potential infirmities in their tax notices. This presumption is not borne out by the facts of this case, particularly since the counties have disregarded their statutory obligation to give notice to taxpayers when they receive property tax overpayments. See Minn. Stat. § 276.19.

[9] The Minnesota Supreme Court purported to apply the notice principles discussed by this Court in *Winona & St. Paul Land Co.* v. *State of Minnesota*, 159 U.S. 526 (1895). See App., *infra*, 19a. That decision, however, provides no support for the holding below. In *Winona*, this Court approved a process by which counties could initiate suit to recover delinquent taxes by publishing a notice listing the property and its owner, along with the amount of tax owing; owners had 20 days from the date of publication to file a defense or objection. See 159 U.S. at 535-536. There, in contrast to this case, property owners were notified of the county's suit and given an opportunity (albeit a brief one) to mount their defense. It may be added that there is reason to question whether all aspects of *Winona* remain good law after *Mullane*, which disapproved notice by publication where personal notice is practicable. See 339 U.S. at 317-319.

§ 278.01 challenge already had expired. Needless to say, this kind of refund mechanism constitutes process "which is a mere gesture." *Mullane*, 339 U.S. at 317. Such a system, in which the statute of limitations expires simultaneously with the event that triggers the right to sue, doubtless would be suitable in Wonderland, where the Queen of Hearts advocated "[s]entence first – verdict afterwards."[10] But it has no place in a jurisdiction governed by the Due Process Clause.[11]

Of course, states may take reasonable steps to ensure the integrity of the tax collection process. They may, for example, "enforce relatively short statutes of limitations applicable to

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[10] L. Carroll, ALICE'S ADVENTURE IN WONDERLAND, in THE ANNOTATED ALICE 124 (M. Gardner ed. 2000).

[11] The Minnesota court also suggested, somewhat defensively, that § 278.01 "provides only one of several opportunities to challenge property taxes" (App., *infra*, 21a), noting that taxpayers could "challenge the estimated market value of their property before local boards of review and equalization," could "seek adjustments directly from county assessors," and could apply for tax abatements from the county or the state commissioner of revenue. *Ibid.* But these avenues of relief have no bearing at all on the constitutional issues presented here. That taxpayers could have challenged the *value* assigned to their property by the assessor – a matter as to which they clearly did receive ample, fully informative notice – has nothing to do with the current challenge to the choice of *class rate* because, unlike valuation situations, taxpayers have no choice but to rely upon the assumption that taxing officials have calculated the tax demanded in accordance with lawful rates. By the same token, that taxpayers theoretically could have sought relief directly from assessors is immaterial, since any such request would have to have been made long before tax bills were prepared, at a time when taxpayers had no notice of the class rate problem. As for abatements, the relief is discretionary with county boards, is not subject to judicial review, and *already* has been denied to each of the petitioners here under Minn. Stat. § 375.192.

[tax refund] actions." *McKesson*, 496 U.S. at 45 & n.29 (citing Florida's three-year statute of limitations). So here, it may be that the Minnesota regime would comport with due process if the counties, reasonably in advance of the date for filing a challenge, provided meaningful and intelligible notice of the class rate they would use in calculating tax bills. But the Minnesota regime offers "no tenable ground for dispensing with" *any* procedural protection against imposition of an illegal tax. *Mullane*, 339 U.S. at 318. Cf. *Walker*, 352 U.S. at 115.[12]

As this Court put it in very similar circumstances,

> [u]ndoubtedly, the state court had the power to construe the statute dealing with [tax refunds] * * *. But, while it is for the state courts to determine the adjective as well as the substantive law of the State, they must, in so doing, accord the parties due process of law. Whether acting through its judiciary or through its legislature, a State may not deprive a person of all existing remedies for the enforcement of a right, which the State has no power to destroy, unless there is, or was, afforded to him some real opportunity to protect it.

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[12] As Justice Stringer noted in his dissent, § 278.01 initially was drawn for use in challenges to the valuation and classification of property, and in such instances its short filing deadline *does* give taxpayers a meaningful opportunity to challenge errors. Notices sent to taxpayers in February of the year *preceding* the payment of tax – more than a year before expiration of § 278.01's limitations period – describe the proposed valuation and classification of property. See page 5, *supra*. And taxpayers should have little difficulty identifying errors on these points; owners will know whether their properties are residential rather than commercial, or whether in their opinion the assessor has overstated the property's value. In contrast, where errors of the sort involved in this case are involved, it is practically impossible for a taxpayer to identify the mistake until the filing deadline has passed.

Brinkerhoff-Faris, 281 U.S. at 681-682. See *Richards*, 517 U.S. at 803. Because the Minnesota system, as construed by the court below, offers taxpayers no such opportunity, "[i]f the judgment [below] is permitted to stand, deprivation of the [taxpayers'] property is accomplished without [their] ever having had an opportunity to defend against exaction." *Brinkerhoff-Faris*, 281 U.S. at 679.

3. Although the lack of notice and the absence of any meaningful opportunity to contest the illegal tax is enough to render the Minnesota scheme constitutionally defective, it is worth adding that the court below compounded that problem by engaging in the sort of "bait and switch" that this Court repeatedly has condemned as inconsistent with due process requirements. Prior to the decision of the Minnesota Supreme Court in this case, Minnesota taxpayers had every reason to believe they could challenge the application of improper class rates by invoking common law remedies that were *not* governed by the March 31 filing deadline. Indeed, it had been the settled rule in Minnesota for almost 100 years that a common law action was available to recover real property taxes that had been overpaid in reliance on a misstatement by the county auditor of the amount due. Thus, in *Wheeler* v. *Board of Commissioners of Hennepin County*, 91 Minn. 890 (Minn. 1902), on facts quite similar to those here – the Hennepin County auditor had given the taxpayer a tax statement that overstated the amount actually due under the governing law (see *id.* at 890) – the Minnesota Supreme Court held that the taxpayer could seek a refund for "money had and received" because he had been entitled "to rely upon the implied assertion [in the auditor's demand] that the full amount alleged was actually due, and necessary to be paid." *Ibid.* The decision in *Wheeler* has subsequently been relied upon by the Minnesota courts and never has been questioned. See *Sloan* v. *City of Duluth*, 259 N.W. 393, 395 (Minn. 1935); *Cooperative Power Ass'n* v. *Astleford*, 386 N.W.2d 313, 315 (Minn. App. 1986). Indeed, both trial courts in this case, the

court of appeals, and the three dissenters on the Minnesota Supreme Court (who found *Wheeler* controlling, see App., *infra*, 26a-27a) believed that the taxpayers here were free to proceed under remedies other than Minn. Stat. § 278.01.

Against this background, the taxpayers "reasonably relied on the apparent availability of a postpayment refund when paying the tax." *Newsweek*, 522 U.S. at 445. Conversely, "no reasonable taxpayer [in petitioners' position] would have thought that [§ 278.01] represented, in light of the apparent applicability of the [common law action recognized in *Wheeler*], the exclusive remedy for unlawful taxes." *Reich*, 513 U.S. at 111 (emphasis omitted). This case therefore is governed by the principle that a state may not "hold out what plainly appears to be a 'clear and certain' post deprivation remedy and then declare, only after the disputed taxes have been paid, that no such remedy exists." *Id.* at 108. In both *Reich* and *Newsweek*, taxpayers relied on state refund statutes that appeared to provide post-payment relief for illegal taxes; in both cases, the state courts held, after the taxpayers paid the taxes, that a predeprivation challenge was the exclusive means of obtaining relief. See *Reich*, 513 U.S. at 109-110; *Newsweek*, 522 U.S. at 444. This Court held in both cases that such an outcome violated due process requirements, explaining that, although states are free to offer either pre- or post-deprivation remedies, "what a State may not do * * * is to reconfigure its scheme, unfairly, in mid-course – to 'bait and switch.'" *Reich*, 513 U.S. at 111 (emphasis omitted). Those holdings are controlling here.

4. The error below involves a serious and recurring issue of great practical importance that warrants review by this Court. The Minnesota Supreme Court's holding denied due process to thousands of taxpayers and left in place a system that inevitably will cause similar deprivations in the future. And perhaps more fundamentally, the Minnesota court's approach typifies the

continuing reluctance of many state courts and taxing officials to implement the principles applied in *McKesson*. The Court has addressed this problem in decisions like *Reich* and *Newsweek*. See also *Harper* v. *Virginia Dept. of Taxation*, 509 U.S. 86 (1993); *James B. Beam Distilling Co.* v. *Georgia*, 501 U.S. 529 (1991). Other questionable holdings by state courts refusing to allow tax challenges have escaped this Court's review.[13] Indeed, this is not the first time the Minnesota Supreme Court has itself proved reluctant to apply due process requirements in the context of tax refunds; in earlier litigation, this Court had to *twice* vacate decisions of the Minnesota Supreme Court denying relief before that court finally acknowledged the plain import of *McKesson*. See *Norwest Bank Duluth, N.A.* v. *James*, 501 U.S. 1246 (1991); *Norwest Bank Duluth, N.A.* v. *McClung*, 509 U.S. 917 (1993); *Cambridge State Bank* v. *James*, 514 U.S. 917 (Minn. 1994). Against this background, review of the decision below by this Court could both correct a manifest injustice and provide useful guidance to lower courts that continue to struggle with the application of due process principles in tax refund litigation.

II. THE ARBITRARY ASSIGNMENT OF HIGHER RATES TO SOME TAXPAYERS VIOLATED THE EQUAL PROTECTION CLAUSE

The Minnesota Supreme Court also plainly departed from this Court's precedents in its equal protection analysis. Petitioners argued that the counties violated the Equal

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[13] See, *e.g.*, *Dryden* v. *Madison County*, 696 So.2d 728, 729-730 (Fla. 1997) (*McKesson* does not apply where the unlawful tax is not discriminatory); *General Motors Corp.* v. *City of Kansas City*, 895 S.W.2d 59, 62-63 (Mo. Ct. App. 1995) (relief barred because taxpayer did not file predeprivation challenge that was not held to be mandatory until after the taxes were paid); *PIA New Jersey, Inc.* v. *Director, Division of Taxation*, 13 N.J. Tax 94, 101 (1993) (*McKesson* dos not apply where tax violates the First Amendment).

Protection Clause by subjecting them to a higher class rate than was used in calculating the taxes of other, identically situated property owners; petitioners noted that, even if their state-law claims were barred by § 278.01's statute of limitations, an independent cause of action was available with which they could pursue their constitutional claims.[14] The court below found it unnecessary to decide whether petitioners' equal protection claims were time-barred, holding instead on the merits that differential treatment arising "from bureaucratic errors" does not constitute an equal protection violation. App., *infra*, 23a.

The Minnesota court's analysis, however, plainly was wrong. This Court has held repeatedly that "the purpose of the equal protection clause of the Fourteenth Amendment is to secure every person within the State's jurisdiction against intentional and arbitrary discrimination, whether occasioned by express terms of a statute or by its improper execution through duly constituted agents." *Village of Willowbrook* v. *Olech*, 528 U.S. 562, 564 (2000) (citations and internal quotation marks omitted). The Court has applied this principle repeatedly in cases involving the differential application of tax laws by state officials.[15] And here, it is undisputed that county officials

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[14] Petitioners argued below that their federal constitutional claims could proceed under 42 U.S.C. § 1983 because, if those claims were time-barred under state law, the state remedies would not be "adequate" within the meaning of *National Private Truck Council, Inc.* v. *Oklahoma Tax Comm'n*, 515 U.S. 582, 591 (1995). The Minnesota statute of limitations for equal protection claims is six years. See *Jacobson* v. *Board of Trustees*, 627 N.W.2d 106 (Minn. App. 2001). See App., *infra*, 92a (trial court noted that "Plaintiffs still would be entitled to recover under their constitutional law claims" if no Minnesota statutory action were available).

[15] See, *e.g.*, *Allegheny Pittsburgh Coal Co.* v. *County Comm'n*, 488 U.S. 336, 345-346 (1989); *Hillsborough Township* v. *Cromwell*,

effectively placed identically situated property owners in one of two categories, subjecting some to illegal and others to lawful rates. This would appear to be the definition of "arbitrary" conduct. The counties' actions likewise were "intentional" in the relevant sense: the taxpayers were injured, not by a random traffic accident, but by a decision to apply particular (and, as it happens, excessive) rates.

The Court's holdings make this point clear. In *Logan* v. *Zimmerman Brush Co.*, 455 U.S. 422 (1982), a majority of the Court, in two separate opinions, found an equal protection violation in circumstances where claimants effectively were accorded differential treatment as a result of "isolated * * * bureaucratic oversight." *Id.* at 443 (Powell J., concurring in the judgment). See *id.* at 442 (opinion of Blackmun, J.) ("certain randomly selected claims" received less favorable treatment than others). A majority of the Court concluded that this regime violated the Equal Protection Clause because it was "the very essence of arbitrary state action." *Ibid.* See *id.* at 444 (Powell, J., concurring in the judgment) (system is "arbitrary and irrational"). Similarly, in *Olech* the Court found that the plaintiff was able to state an equal protection claim as a "class of one" where she alleged that village officials treated her "differently from others similarly situated and that there [was] no rational basis for the difference in treatment"; the Court held that "[t]hese allegations, quite apart from the Village's subjective motivation, are sufficient to state a claim for relief under traditional equal protection analysis." 528 U.S. at 564, 565.

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326 U.S. 620, 622-623 (1946); *Iowa-Des Moines Nat. Bank* v. *Bennett*, 284 U.S. 239, 242-243, 245 (1931); *Sioux City Bride Co.* v. *Dakota County*, 260 U.S. 441, 445 (1923); *Raymond* v. *Chicago Union Traction Co.*, 207 U.S. 20, 37 (1907).

That reasoning should have been dispositive here. Because the decision below cannot be reconciled with this Court's precedents – and because it creates confusion about the application of an important principle of constitutional law – further review is warranted.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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JANUARY 2002

APPENDIX

APPENDIX A

Supreme Court of Minnesota.

PROGRAMMED LAND, INC., et al., Respondents,
v.
Patrick O'CONNOR, in his capacity as Treasurer and Auditor for Hennepin County, et al., petitioners, Appellants,
and
Harold Christian, individually, and on behalf of all others similarly situated, Respondent,
v.
Thomas Novak, in his capacity as Treasurer and Auditor for Dakota County, et al., Appellants.

Nos. CX-99-777, C7-99-1210.

Sept. 20, 2001.

Syllabus by the Court

1. Applying the appropriate real property tax class rate is part of the assessment process, and any errors in applying class rates that result in the partial, unfair or unequal assessment of property are subject to challenge under Minn.Stat. § 278.01, subd. 1 (2000).

2. The application of class rates by an assessor is part of the extension and collection of taxes by executive power, and therefore the misapplication of class rates as prescribed by statute is the levy of an illegal tax for the purposes of a challenge under Minn.Stat. § 278.01, subd. 1.

3. Minn.Stat. § 276.19 (1998) does not provide an independent procedure by which to challenge property tax overpayments.

4. Notice and opportunity to challenge the misapplication of class rates under Minn.Stat. § 278.01, subd. 1 and other methods of review established by statute satisfy due process requirements.

5. The misapplication of class rates did not violate respondents' federal and state constitutional rights to equal protection.

6. Having failed to avail themselves of adequate statutory remedies, respondents may not seek to recover property tax overpayments under equitable or common law theories.

Heard, considered and decided by the court en banc.

OPINION

ANDERSON, RUSSELL A., Justice.

Respondent taxpayers seek to recover real property tax overpayments resulting from the erroneous application of property tax class rates. The court of appeals held that the application of the wrong class rate was not an assessment error and therefore not subject to challenge under Minn.Stat. § 278.01, subd. 1 (2000). The court also ruled that respondents could not seek refunds based on the class rate error under Minn.Stat. § 276.19 (1998) or based on their constitutional arguments. Because no statutory or constitutional remedy was available, the court concluded that respondents can proceed under common law and equitable theories. We conclude that Minn.Stat. § 278.01 does cover the claims asserted by respondents, and because a statutory procedure was available, common law and equitable remedies are not. Respondents'

claims are time-barred under the provisions of section 278.01, subdivision 1. We agree with the court of appeals that respondents cannot seek refunds based on the class rate error under Minn.Stat. § 276.19. We also agree with the court of appeals that respondent cannot seek refunds on constitutional grounds.

Respondent Harold Christian owned a vacant commercial lot in Dakota County between 1971 and 1997. In 1991, the legislature abolished the vacant land classification effective for taxes payable in 1993,[1] and the Dakota County Assessor, pursuant to Minn.Stat. § 273.13, subd. 24 (Supp.1993), classified the parcel as class 3(a). For taxes payable in 1993, class 3(a) property was valued for taxation purposes at a rate of 5.06 percent of market value, except that the first $100,000 of market value of one property per owner in the county was valued at a reduced rate of three percent. Minn.Stat. § 273.13, subd. 24. The Dakota County Assessor did not apply the reduced class rate to which Christian's property was entitled, and, as a result, Christian overpaid his taxes for taxes payable in 1993 and 1994. Christian brought a timely challenge to his taxes payable in 1994 under Minn.Stat. § 278.01, subd. 1 (a chapter 278 petition), and after confirming with the Minnesota Department of Revenue that the reduced class rate applied to vacant class 3(a) property, the Dakota County Assessor adjusted Christian's taxes for taxes payable in 1994 and applied the reduced class rate thereafter. In 1997, Christian filed a complaint with the county to challenge his taxes payable in 1993, but Dakota County refused to refund the excess taxes paid because the period within which to file a chapter 278

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[1] Act of May 31, 1991, ch. 291, art. 1, § 23, subd. 31, 1991 Minn. Laws 1361, 1391.

petition or to apply for an abatement under Minn.Stat. § 375.192 (Supp.1997) had lapsed.[2]

Following a court trial on stipulated facts, the Dakota County District Court ruled that chapter 278 did not apply under the circumstances and that Christian was entitled to a refund under the theory of money had and received for excess taxes paid in the amount of $1,988.04 plus prejudgment interest. The trial court rejected the county's argument that the misapplied class rate was an error in classification and thus an assessment error that must be challenged exclusively under chapter 278. The court concluded that the ultimate responsibility for applying the correct class rate belongs not to the assessor but to the auditor, who in this case failed to ensure that the correct rate was applied. The court characterized the auditor's error as "arithmetic" and, as such, not the type of error contemplated by the legislature when it enacted chapter 278.

In Hennepin County District Court, respondents Programmed Land and others brought an action in 1998 similarly alleging that the county failed to apply the reduced class rate to which their class 3(a) properties were entitled under Minn.Stat. § 273.13, subd. 24, and as a result they overpaid their real property taxes between 1987 and 1997. Hennepin

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[2] In 1997, taxpayers had until March 31 of the year taxes were payable to file a chapter 278 petition.

Minn.Stat. § 278.01, subd. 1. Taxpayers had until the end of the year taxes were payable to apply for an abatement, unless the purported error was "clerical" or the taxpayer did not apply because of hardship, in which cases the taxpayer had an additional two years to apply for an abatement. Minn.Stat. § 375.192, subd. 2 (Supp.1997).

County made class rate changes for taxes payable in 1997 and applied the reduced class rates thereafter and made abatements for taxes payable in 1996, but it rejected claims for refunds and applications for abatements for pay years 1987 to 1995 because respondents' claims and applications had not been timely filed pursuant to Minn.Stat. §§ 278.01, subd. 1 and 375.192.

The respondents brought an action in Hennepin County District Court seeking a declaration that they were entitled to relief under Minn.Stat. §§ 276.19[3] and 375.192 and several common law, equitable and constitutional theories and seeking an injunction compelling the county to refund the amounts that the respondents alleged were overpaid. The county moved for summary judgment dismissing the respondents' actions, arguing that section 278.01 provides respondents' exclusive judicial remedy, that therefore there is no relief available under section 276.19 or under common law, equitable or constitutional theories, and further that the period for abatement applications under section 375.192 had lapsed. The district court denied the county's motion for summary judgment, ruling that chapter 278 does not provide respondents' exclusive judicial remedy and that they could proceed to seek recovery of excess taxes paid

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[3] In 1998, section 276.19, subdivision 1 provided:

> If an overpayment of property tax arises on a parcel for any reason, the responsible county official shall promptly notify the payer by regular mail that the overpayment has occurred. The notice must state the amount of overpayment and identify the parcel on which the overpayment occurred. The notice must also instruct the payer how to claim the overpayment and advise that the overpayment is subject to forfeiture under this section. If the name or address of the payer is not known, the notice of unclaimed overpayment must be mailed to the taxpayer of record in the office of the county auditor.

under Minn.Stat. §§ 276.19 and 375.192 and under common law, equitable and constitutional theories. The court reasoned that chapter 278 does not provide a remedy for these claims because applying the erroneous class rate was not an assessment error but was instead the result of the auditor's failure to compile an accurate ownership list and fix the correct rates.

The court of appeals consolidated both cases for appeal and affirmed the district courts' rulings that respondents did not have a cause of action to challenge the erroneous class rates under section 278.01, subdivision 1 and could recover or proceed to seek recovery under common law and equitable theories. *Programmed Land, Inc. v. O'Connor,* 602 N.W.2d 895, 905 (Minn.App.1999), *rev. granted* (2000). The court reasoned that while all challenges to purported assessment errors must be brought, if at all, under chapter 278, the application of an erroneous class rate is not an assessment error. *Programmed Land,* 602 N.W.2d at 904-05. The court of appeals agreed with the district courts that the application of an erroneous class rate is not an error in classification, one aspect of the assessment process, reasoning that the reduced class rate does not constitute a separate class of commercial- industrial property, nor does the application of class rates require the assessor's discretionary decision making. *Id.* at 903-04. The court reversed the ruling of the Hennepin County District Court that respondents have a cause of action on federal and state constitutional due process and equal protection grounds, *id.* at 908, and under Minn.Stat. § 276.19, 602 N.W.2d at 906. The court held that respondents, having no statutory or constitutional remedy, may seek common law or equitable relief. *Id.* at 908-09.

While the cases come to us in different procedural postures, we are asked in both cases to review issues of law, which we do

de novo. *Burlington N. R.R. Co. v. Comm'r of Revenue,* 606 N.W.2d 54, 57 (Minn.2000). For the purposes of this appeal the material facts are not in dispute. The counties applied the wrong class rates to respondents' class 3(a) property, and respondents, as a consequence, paid excess property taxes. The counties provided respondents with proper notice of their estimated and final property tax, but the notices did not contain information from which respondents could determine that the counties applied the wrong class rate. Finally, respondents paid the amount due as indicated on the erroneous tax statements and did not file timely claims challenging the erroneous property taxes under section 278.01, subdivision 1.

Our general rule is that a person who pays an illegal or irregular tax, even if ignorant that the tax is illegal or irregular, is not entitled to recover the tax in equity when that person has a statutory remedy by review, appeal or defense to proceedings to enforce the tax. *Gould v. Bd. of Comm'rs of Hennepin County,* 76 Minn. 379, 381, 79 N.W. 303, 303 (1899). The court of appeals held that respondents may recover in equity because chapter 278, section 276.19 and constitutional remedies do not provide relief for this type of claim. We must first consider, therefore, whether respondents could have brought a claim under section 278.01, subdivision 1. If section 278.01, subdivision 1 provides a remedy for respondents' claims, respondents may not bring actions under section 278.01 because their claims are untimely. If so, we must then address whether respondents are provided an alternative remedy elsewhere in the statutes. Our third consideration is whether the means provided by statute to seek relief, if any, satisfy respondents' constitutional rights to due process and equal protection. If statutory mechanisms for relief are nonexistent or insufficient constitutionally, we will finally consider whether respondents

may recover or proceed to recover under common law or equitable theories.

The issue at the heart of this case is the scope of Minn.Stat. § 278.01. subd. 1, which provides in relevant part:

> Any person having personal property, or any estate, right, title, or interest in or lien upon any parcel of land, who claims that such property has been partially, unfairly, or unequally assessed in comparison with other property * * *, or that the parcel has been assessed at a valuation greater than its real or actual value, or that the tax levied against the same is illegal, in whole or in part, or has been paid, or that the property is exempt from the tax so levied, may have the validity of the claim, defense or objection determined by the district court of the county in which the tax is levied or by the tax court * * *. [T]he petitioner must file the copies [of a petition for determination] with proof of service * * * on or before March 31 of the year in which the tax becomes payable.

Section 278.01, subdivision 1 provides a cause of action to bring five types of challenges to property taxes within a limited time frame--by March 31 of the year taxes are payable.

The counties contend that any objection to property taxes[4] may be raised under section 278.01,[5] but we have not construed the statute that broadly. The counties rely primarily on *Land O'Lakes Dairy Co. v. Village of Sebeka,* where we said: "[W]hen the legislature enacted [chapter 278], it did so for the

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[4] Throughout the remainder of this opinion, the phrase "property tax" refers to real property taxes.

[5] The counties recognize the exclusion of challenges to special assessments as provided in Minn.Stat. § 278.01, subd. 3 (2000).

purpose of providing a rather simple remedy for the taxpayer to have his real estate grievances determined * * *." 225 Minn. 540, 548-49, 31 N.W.2d 660, 665 (1948). We explained, however, that chapter 278 provides an adequate cause of action "*so far as the determination of tax matters referred to in § 278.01 on real estate is concerned* * * *." *Land O'Lakes,* 225 Minn. at 549, 31 N.W.2d at 665 (emphasis added). In the cases relied upon by the counties, *State v. Elam,* 250 Minn. 274, 84 N.W.2d 227 (1957), *Commissioner of Taxation v. Crow Wing County,* 275 Minn. 9, 144 N.W.2d 717 (1966), *Fichtner v. Schiller,* 271 Minn. 263, 135 N.W.2d 877 (1965), and *Land O'Lakes,* we held that chapter 278 provides the exclusive means to bring an action in court to challenge an assessment, one of the five listed types of challenges, but we did not conclude that chapter 278 provides the exclusive judicial means to make all property tax challenges. *Fichtner,* 271 Minn. at 267, 135 N.W.2d at 880; *Elam,* 250 Minn. at 276, 84 N.W.2d at 228; *Land O'Lakes,* 225 Minn. at 547, 31 N.W.2d at 664.[6] By its plain terms, section 278.01 does not provide a cause of action for all possible challenges to property taxes, and *Land O'Lakes* and other cases relied upon by the counties are consistent with that limitation.

Even if the scope of actionable claims under section 278.01 is limited to the five types listed in the statute, the counties maintain that the misapplication of class rates can be challenged as either a partial, unfair or unequal assessment or the levy of an illegal tax. Before addressing whether the misapplication of class rates can be challenged as an unfair or unequal

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[6] *Crow Wing County* concerned whether a county had standing to appeal a decision of the commissioner of taxation under Minn.Stat. § 271.06, subd. 1 (1965) and does not apply here. 275 Minn. at 11, 144 N.W.2d at 718.

assessment, a brief discussion of how class rates are applied in the property tax process will be helpful.

Minnesota Statutes § 273.13 (2000) divides real property into classes for taxation purposes and assigns each class one or more class rates. The assessor determines a property's class and estimated market value and then applies the appropriate class rate to calculate the property's "net tax capacity." Minn.Stat. § 274.04, subds. 1 & 2 (2000).[7] The net tax capacity is thus the percentage of a property's estimated market value that is subject to taxation. Assessors enter net tax capacities into the assessment books or prepare summaries of total net tax capacities if using a computerized system and forward the books or the summaries to the auditor for certification. *Id.* The auditor is also directed by statute to compute net tax capacities using class rates and estimated market values. Minn.Stat. § 275.08, subd. 1a (2000). Once the auditor receives the levies from the taxing jurisdictions, the auditor then "spreads the levy" by dividing it by the total net tax capacity in the jurisdiction, a calculation that fixes the tax rate, and then finally applies the tax rate to an individual property's net tax capacity to calculate the property tax. *Id.*, subd. 1b.[8]

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[7] For example, if a property was valued at $500,000 and is assigned to a class with a two percent class rate, the resulting net tax capacity of the property is $10,000 (.02 x 500,000 = 10,000).

[8] For example, if a taxing district, like a county, certifies a levy of $1,000,000, and the total of all net tax capacities of taxable properties in the county equals $2,000,000, the resulting tax rate (or tax capacity rate) is .5 (1,000,000 / 2,000,000 = .5). If the property's net tax capacity is $10,000, the resulting property tax is $5,000 (10,000 x . 5 = 5,000).

Our brief review of the property tax process demonstrates that one of the assessor's duties is to determine the proper class rates and apply them to market value. Respondents contend nonetheless that erroneous class rates are not assessment errors because applying class rates has none of the hallmarks of valuation or classification--two tasks that we have determined belong to the assessment process. *Summit House Apartment Co. v. County of Hennepin,* 312 Minn. 358, 362, 253 N.W.2d 127, 129 (1977).[9]

Respondents take too narrow a view of the assessment process. Our cases describe assessment as including the entire process that results in the determination of a property's taxable value. In *Swanson v. Minnesota Tax Commission,* we said,

> To assess property is to fix its value for the purpose of taxation. The assessed valuation of property is that value upon each unit of which a prescribed amount must be paid as taxes in the future; it is a factor which, together with the tax rate fixed by the taxing agencies of government, is used to determine the amount of taxes to be charged against specific property.

205 Minn. 582, 591, 287 N.W. 317, 322-23 (1939) (citations omitted). This describes a process that includes, rather than excludes, the application of class rates to estimated market value to arrive at the assessed valuation. *Accord B.W. & Leo Harris Co. v. Dakota County,* 246 Minn. 20, 25, 74 N.W.2d 111, 114 (1955) (explaining that the assessment process includes both entering the property's value in the book opposite

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[9] Valuation is the process of determining a property's estimated market value, and classification is the process of determining the statutory class into which a property falls.

the description and entering the assessment in the assessment book). We also considered the nature of assessment in *Summit House,* where we held that the taxpayer was not entitled to the new class rate for the period in question because reclassification was a duty of the assessor rather than the auditor. 312 Minn. at 363, 253 N.W.2d at 130. In distinguishing between the duties of the assessor and the auditor we explained, "The assessor is entrusted with the responsibility of assessing property for the purpose of determining its value for taxation. In contrast, the auditor has the duty of calculating and assessing the taxes once the taxable value has been determined by the assessor." *Id.* at 362, 253 N.W.2d at 129 (citations omitted).

In *Summit House* we concluded that classification is an aspect of the assessment process in part because classification is integral to the assessor's function of ascertaining a property's taxable value. *Id.* We determined that the task of classification is the duty of the assessor, not the auditor, because "the assessor has primary responsibility for ascertaining taxable value, [and] it logically follows that the task of classifying property is an integral part of this function * * *." *Id.* Like classification, applying class rates is integral to the assessor's function of ascertaining a property's taxable value. The assessor must multiply the appropriate class rate against the property's estimated market value to determine a property's taxable value.

Contrary to respondents' argument and the dissenting opinion, action by the assessor need not entail fact-finding or the exercise of discretion for it to be considered part of the assessment process. In *Fichtner* we said that assessment is "the quasi-judicial act consisting of making a list of the taxpayer's property and fixing its valuation for appraisement and tax purposes," 271 Minn. at 267, 135 N.W.2d at 880, but we did not limit assessment to fact-finding or discretionary functions.

The issue in *Fichtner* was not the scope of the assessment process but whether an assessment could be challenged under Minn.Stat. § 275.26 (2000), which provides a cause of action to challenge illegal legislative levies. Although we described the overall assessment process as quasi-judicial, that description does not preclude the consideration of nondiscretionary acts as elements of assessment. The process we described in *Fichtner*, ranging from listing the taxpayer's property to fixing its valuation for tax purposes, is consistent with our previous cases defining assessment as inclusive of the acts necessary to determine a property's taxable value. 271 Minn. at 266, 135 N.W.2d at 880.

We held in *Saxhaug v. County of Jackson* that a nondiscretionary error-- failure to specify a mill rate as required by statute--could be challenged under section 278.01. 215 Minn. 490, 495, 10 N.W.2d 722, 725 (1943). Our rationale in *Saxhaug* was that chapter 278 preserved the challenges that were formerly available under Mason St.1927, § 2116, a section of the delinquent tax statutes. 215 Minn. at 495, 10 N.W.2d at 725. Section 2116 provided taxpayers with a broad cause of action:

> Any person having any estate, right, title or interest in, or lien upon, any parcel of land * * * within twenty days after the publication of [the notice of delinquent taxes] may file with the clerk *an answer * * * setting forth his defense or objection to the tax or penalty against such parcel of land.*

Mason St. § 2116 (emphasis added). We construed section 2116 broadly, concluding that "the statute was not intended to precisely define and limit the defenses which may be made." *Otter Tail County v. Batchelder*, 47 Minn. 512, 515, 50 N.W. 536, 537 (1891). Section 2116 allowed challenges to a property tax based on errors in calculating the tax due,

including omissions and errors in computing the amount of tax due, if the error or omission resulted in partial, unfair or unequal assessment. *Kipp v. Dawson*, 31 Minn. 373, 377-78, 17 N.W. 961, 962 (1884). *See also State v. Certain Lands in Redwood County*, 40 Minn. 512, 519, 42 N.W. 473, 475 (1889). Because claimants could challenge nondiscretionary acts under section 2116, the preservation in section 278.01 of challenges that were actionable under section 2116 supports the conclusion that nondiscretionary aspects of the assessment process are subject to challenge under section 278.01.

A more inclusive concept of the assessment process that makes alleged nondiscretionary errors subject to section 278.01 is consistent with the purpose and function of chapter 278. We observed in *Elam* that the express wording of chapter 278 demonstrates that it was enacted to benefit both the taxpayer and the state. 250 Minn. at 277-78, 84 N.W.2d at 230. The taxpayer benefited because chapter 278 provided a means to object to property taxes without first having to default and then answer in delinquent tax proceedings, and the state benefited because, by providing a cause of action without having to default, chapter 278 limited or prevented tax delinquency and enforced the prompt collection of taxes, ensuring a reliable stream of revenue at a time when local governments were threatened by financial instability. *Elam*, 250 Minn. at 278, 84 N.W.2d at 230. Having provided a means to challenge property taxes for the purpose of ensuring their prompt payment, the legislature would not then undermine that purpose by allowing a significant number of tax grievances to be free of the chapter 278 filing limitation and, consequently, actionable years after the taxes were due. When taxpayers have missed an opportunity to bring a claim under section 278.01, we have consistently rejected their efforts to seek an alternative statutory remedy, in part because we have recognized that the legislature

established a limited time frame to bring a property tax action to promote the prompt collection of taxes and avoid a multiplicity of suits. *E.g., Fichtner,* 271 Minn. 263, 135 N.W.2d at 878; *Elam,* 250 Minn. at 279-80, 84 N.W.2d at 231; *Land O'Lakes,* 225 Minn. at 547, 31 N.W.2d at 662. Leaving many types of challenges open to equitable remedies would undermine the benefits the legislature intended to provide in setting the short time limit in chapter 278.

The express wording of section 278.01 supports a broad interpretation of its scope in other ways. First, the terms used to describe the five categories--e.g. "assessed" and "illegal" tax--are broad in nature. Minn.Stat. § 278.01, subd. 1. Second, chapter 278 acknowledges and preserves Minn.Stat. § 279.19 (2000) except as otherwise provided in chapter 278. Section 279.19 allows a judge to reduce a judgment for delinquent taxes based on the "omission of any of the things by law provided in relation to such assessment and levy, or of anything required by any officer to be done prior to the filing of the [delinquent tax] list with the court administrator * * * [if] such omission has resulted to the prejudice of the party objecting, and * * * [in] taxes [that] have been partially, unfairly, or unequally assessed * * *." Minn.Stat. § 279.19. The phrases "omission of any of the things required by law" and "anything required by any officer" are broadly inclusive, and are vindicated through a petition under section 278.01. *See* Minn.Stat. § 278.06 (stating section 279.19 applies "except as herein otherwise provided").

We conclude that assessment is the process by which taxable value is ascertained, and that process includes the determination of market value, classification and the application of class rates. In current statutory parlance, the taxable value of property is its net tax capacity. Thus, assessment for the purposes of section 278.01, subdivision 1 is the process of

determining a property's net tax capacity. Accordingly, we hold that applying the appropriate class rate is part of the assessment process and any errors in applying the class rates that result in the partial, unfair or unequal assessment of property are subject to challenge under section 278.01, subdivision 1.

Having concluded that an erroneous class rate may be challenged as an unfair or unequal assessment, we need go no further in determining whether respondents have a cause of action under section 278.01, subdivision 1. We will nonetheless discuss whether the application of an erroneous class rate is also the levy of an illegal tax under section 278.01, subdivision 1, because the court of appeals addressed this issue in a published opinion.

We have noted that the term "levy" has been used in the context of the taxation process with various meanings--as imposing a tax by legislative act, collecting the tax by executive act and determining the amount of tax to be raised by vote. *State v. Lakeside Land Co.*, 71 Minn. 283, 291, 73 N.W. 970, 973 (1898). In *Fichtner* we observed that the term "levy" can refer loosely to "the entire process by which revenue is raised," 271 Minn. at 266, 135 N.W.2d at 879, and in the context of section 278.01, we have not limited the concept "levy of an illegal tax" to legislative acts, *see Weyerhaeuser Co. v. County of Ramsey*, 461 N.W.2d 922, 924 (Minn.1990). As we have said, we are inclined to interpret broadly the types of challenges that may be brought under chapter 278 to serve the purposes for which the statute was enacted. We therefore interpret "levy" for the purposes of section 278.01 in its broad sense as we described in *Fichtner*.

This interpretation of levy does not render the other four types of challenges listed in section 278.01 superfluous, because the levy must be of an illegal tax. A challenge based

on the fact that the tax has been paid does not suggest an illegal act. Further, an error in judgment with respect to a particular parcel of property does not result in an illegal tax. An overvaluation of a property's market value, the misclassification of a property or the imposition of a tax on tax-exempt property, for example, does not result in illegal taxes if the alleged error is based on the assessor's judgment. We conclude that the application of class rates by an assessor is part of the extension and collection of taxes by executive power, and therefore the misapplication of class rates as prescribed by statute is the levy of an illegal tax for the purposes of section 278.01.[10]

We have concluded that respondents had a cause of action to challenge the erroneous class rates under section 278.01, and as it is undisputed that respondents did not file chapter 278 petitions before the filing deadline lapsed, we must consider next whether chapter 278 is respondents' exclusive statutory remedy. We have established that challenges that a property has been partially, unfairly or unequally assessed must be brought, if at all, under chapter 278. *Evanson v. Comm'r of Taxation,* 280 Minn. 559, 561, 159 N.W.2d 259, 261 (1968). Now that we have determined that respondents' claim is an assessment challenge, this rule would suggest that respondents may not seek an alternative statutory remedy.

Respondents contend, however, that in 1987 the legislature made available an alternative remedy when it enacted

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[10] The dissenting opinion contends that we have defined illegal tax so as to create an "absurdity" because a taxpayer's claim may not be "knowable" until the March 31 deadline. Most, if not all, acts relating to the assessment and extension of property taxes, however, occur before March 31 of the year taxes are due. In this case, the misapplications of class rates occurred and were "knowable" before the March 31 deadline.

Minn.Stat. § 276.19.[11] We disagree with respondents and amicus curiae that section 276.19 creates an independent cause of action to bring challenges that could have been brought under section 278.01. While the phrase "overpayment * * * for any reason" is inclusive, to adopt such a construction of the statute would effectively abrogate the statute of limitations set forth in section 278.01 and subvert the policies the time limitation was intended to serve. We will not construe one statute to abrogate another involving the same subject matter without clear legislative intent. *See State ex rel. Mergens v. Babcock*, 175 Minn. 583, 585, 222 N.W. 285, 286 (1928). Section 276.19 is a notice statute--it contains no express language providing taxpayers with a cause of action to challenge property taxes in court. Section 276.19 requires the county to notify the taxpayer that an overpayment has been made as determined in a separate proceeding, but it does not provide an independent procedure to challenge an overpayment.[12]

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[11] Section 276.19 provides that if an overpayment arises on a parcel "for any reason" the county must notify the taxpayer and instruct the taxpayer on how to claim the overpayment. Minn.Stat. § 276.19, subd. 1.

[12] Our construction has no effect on property taxes payable in 1999 and thereafter because in May 2000 the legislature replaced the language "for any reason" in section 276.19 with "due to receipt of a payment that exceeds the total amount of the tax required to be paid on the property tax statement * * *." Act of May 15, 2000, ch. 490, art. 5, § 18, 2000 Minn. Laws 2014, 2085-86. The amendment was put forward explicitly to avoid the construction forwarded by respondents and amicus curiae. Informal hearing on S.F. 2654, Sen. Tax Comm., Property Tax and Local Gov't Budget Div., Feb. 22, 2000 (audio tape) (comments of officials from the Minnesota Department of Revenue).

Respondents argue that if section 278.01 provides the exclusive cause of action to dispute class rates, then section 278.01 violates their federal and state due process rights to notice prior to a deprivation of their property. Respondents must show beyond a reasonable doubt that the notice provisions were unconstitutional. *In re Cold Spring Granite Co.*, 271 Minn. 460, 467, 136 N.W.2d 782, 787 (1965). As applied to this case, respondents contend that they did not have an opportunity to challenge the class rates because they could not have known from their property tax notices that they were not receiving the correct rate. Respondents also challenge the facial constitutionality of section 278.01 on the grounds that under Minn.Stat. § 276.04 (2000) their final property tax statements need not have been sent until March 31--the last day they could have filed a chapter 278 petition. Minn.Stat. § 276.04, subd. 3 (2000).

The U.S. Supreme Court set forth the notice requirement under the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution with respect to property taxes as follows:

> [A] law authorizing the imposition of a tax or assessment upon property according to its value does not infringe that provision of the Fourteenth Amendment to the Constitution * * * if the owner has an opportunity to question the validity or the amount of it either before that amount is determined or in subsequent proceedings for its collection.

Winona & St. Peter Land Co. v. Minnesota, 159 U.S. 526, 537, 16 S.Ct. 83, 40 L.Ed. 247 (1895). We upheld the same notice requirement under the Minnesota Constitution six years earlier. *Certain Lands in Redwood County*, 40 Minn. at 518, 42 N.W. at 475. We subsequently held that the mere publication of the tax list was sufficient notice of the levy of a property tax. *In re*

Delinquent Polk County Real Estate Taxes, 147 Minn. 344, 348-49, 180 N.W. 240, 242 (1920).

We are not persuaded that respondents were denied their constitutional rights to due process for several reasons. First, the notice respondents received gave them a meaningful opportunity to be heard. Property owners receive three notices concerning their property tax before it becomes due. The first notice states the property's estimated market value, and it must be sent out at least 10 days before the local board of equalization meets in April or May of the year taxes are assessed--the year preceding the year taxes are due. Minn.Stat. § 273.121 (2000). The second notice, the "truth in taxation" statement, is sent to each taxpayer between November 10 and November 24 of the year taxes are assessed and contains the estimated market value, class, proposed tax and notice of the place and time local taxing jurisdictions will meet to discuss their levies for the year. Minn.Stat. § 275.065 (2000). The third notice, the final property tax statement, must contain the property's estimated market value, classification, and tax and must be sent out no later than March 31 of the year in which taxes are due. Minn.Stat. § 276.04. Thus, by the end of November of the year taxes are assessed, taxpayers are informed that they will be taxed and are given an estimate of that tax. At that point respondents have the opportunity to challenge local taxing district levies at local meetings, seek an adjustment directly from the assessor, bring an action challenging the property tax as provided under section 278.01, subdivision 1 until March 31 of the following year and seek an abatement until the end of the year taxes are payable.

Despite this notice, respondents contend that the tax notices, while conforming to statute, do not for practical purposes inform them that the wrong class rate was applied. In

the context of challenges to property taxes, notice need not expressly identify every factor and decision that went into the determination of the estimated or final tax on the parcel. The taxpayer may not know for certain whether the estimated tax is lawful or correct by looking at the notice, but the taxpayer is on notice that a tax of an estimated amount will be levied according to the stated value of the property. Our decision in *Certain Lands in Redwood County,* 40 Minn. at 518, 42 N.W. at 475, indicates that the federal and state constitutions require that the taxpayer have an opportunity to question the validity and amount of the tax, not be apprised of all elements of the tax that might contain errors. Such a lengthy document not only would be burdensome to local governments but likely would go unread by taxpayers. The notice of the estimated tax gives the taxpayer adequate notice from which to inquire as to the basis of the tax and then challenge it if the taxpayer believes it was calculated improperly.

As to the facial constitutionality of the March 31 deadline in section 278.01, we observe again that taxpayers have several months after receiving their truth-in-taxation statement to challenge their estimated property tax. Moreover, section 278.01 provides only one of several opportunities to challenge property taxes. Taxpayers may challenge the estimated market value of their property before local boards of review and equalization. Minn.Stat. § 274.01, subd. 1 (2000). Taxpayers may seek adjustments directly from county assessors. Minn.Stat. § 273.061, subd. 9 (2000). Taxpayers may apply for an abatement from the county at least through the end of the year taxes are due and for two additional years if a clerical error is discovered. Minn.Stat. § 375.192. Finally, the commissioner of revenue is empowered to provide abatements under certain circumstances. Minn.Stat. § 270.07, subd. 1 (2000). Due process does not require any particular form of process as long

as it provides notice and a meaningful opportunity to be heard. Based upon the variety of means provided in Minnesota Statutes to challenge property taxes, we conclude that respondents received constitutionally sufficient due process.

Respondents maintain that if they have no statutory remedy they may proceed independently under the theory that the class rate error violated their constitutional right to equal protection under the Fourteenth Amendment to the U.S. Constitution[13] and the Uniformity Clause in Article X, Section 1 of the Minnesota Constitution.[14] We do not reach the issue of whether respondents may proceed independently under either theory because we conclude as a matter of law that the class rate error did not violate respondents' federal and state equal protection rights. To meet the evidentiary burden of establishing a violation of equal protection rights protected by the federal or state constitution, a taxpayer must show that the purported disparity between the taxpayer's assessment and the assessment of similarly situated properties was the result of intentional or arbitrary or systematic discrimination. *See United Nat'l Corp. v. County of Hennepin,* 299 N.W.2d 73, 76 (Minn.1980).

Respondents contend that they were denied the correct class rate because of "bureaucratic errors in the auditor's office." While there is some indication in the record that the assessors had difficulty in applying the reduced class rate, there is no evidence that the assessors intentionally or arbitrarily applied the reduced rate to some eligible properties but not to others.

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[13] "No State shall * * * deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV, § 1.

[14] "Taxes shall be uniform upon the same class of subjects and shall be levied and collected for public purposes * * *." Minn. Const. art. X, § 1.

Respondents, relying on *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 102 S.Ct. 1148, 71 L.Ed.2d 265 (1982), contend that the class rate error is the very essence of arbitrary state action, but the equal protection issue discussed in *Logan* in Justice Blackmun's separately written opinion cited by respondents was whether an Illinois *statute* created unconstitutional classes of claimants, not whether state officials unconstitutionally applied a valid statute. 455 U.S. at 438-39, 102 S.Ct. 1148 (Blackmun, J. concurring). There is no allegation here that section 278.01 creates classes of claimants that receive "radically disparate"[15] rights to review. Where, as here, the differential treatment is alleged to arise only from bureaucratic errors, the standard of intentional, arbitrary or systematic discrimination necessary to prove a violation of equal protection rights is not satisfied.

We hold that respondents had an adequate remedy provided by statute in judicial proceedings under chapter 278 and through local review and abatement to seek redress of their injuries. Further, for the reasons stated above, respondents do not have an independent cause of action under Minn.Stat. § 276.19, nor have their constitutional due process rights or equal protection rights been violated. Having failed to avail themselves of adequate statutory remedies, respondents may not recover their property tax overpayments in common law or equity.

Reversed in part; affirmed in part.

STRINGER, Justice (dissenting).

I respectfully dissent. The majority's definitions of the terms "assessment" and "levy of an illegal tax" for the purposes of Minn.Stat. § 278.01, subd. 1 (2000) are overbroad and result in the application of the strict statute of limitations set forth in

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[15] 455 U.S. at 438, 102 S.Ct. 1148 (Blackmun, J. concurring).

section 278.01 to claims the section was not intended to extinguish.

For purposes of section 278.01, assessment should be limited to determinations of valuation and classification because they are discretionary judgments that are difficult to defend after an extended period of time and are typically facially apparent on the property tax notices--consequently the taxpayer should be expected to move expeditiously to challenge them. In *Fichtner v. Schiller* we defined assessment as "the quasi-judicial act consisting of making a list of the taxpayer's property and fixing its valuation for appraisement and for tax purposes." 271 Minn. 263, 267, 135 N.W.2d 877, 880 (1965). We held that an objection to an increase in real estate valuation was a matter relating to assessment and therefore must be brought under section 278.01. *Fichtner*, 271 Minn. at 267, 135 N.W.2d at 880. We determined that assessment extends to another area of discretionary judgment--classification--in *Summit House Apartment Co. v. County of Hennepin*, 312 Minn. 358, 361, 253 N.W.2d 127, 128 (1977). In *Summit House* we concluded that classification is an assessment function involving "factual judgments concerning compliance with specified statutory criteria," *id.* at 362-63, 253 N.W.2d at 129, a discretionary determination. We reasoned that classification is the assessor's duty in part because classification involves a fact-finding responsibility rather than the "administrative calculation of the appropriate tax that may be performed by the auditor." *Id.* at 362, 253 N.W.2d at 129.

Discretionary judgments are not only central to the assessment process--their expedited resolution was an important factor triggering the reform of property tax administration that led to the adoption of chapter 278 in the first instance. Until chapter 278 was adopted in 1935, a taxpayer could only

challenge a property tax in delinquency proceedings. Historical records indicate that one of the objectives of chapter 278 was to expedite the resolution of challenges to valuation because the long passage of time between assessment and delinquency made valuation judgments difficult to defend. *Tax Delinquency, Report and Recommendations of a Committee Appointed by Governor Floyd B. Olson,* Jan. 1, 1935, 1, 4. We recognized in *Petition of Slaughter* that the legislature put chapter 278 in place to shorten the time frame between the assessment and payment of property taxes. 213 Minn. 70, 72, 5 N.W.2d 64, 66 (1942).

Assigning the appropriate class rate to the taxpayers' property, the matter before the court here, is not an exercise of discretion in any sense because the property's classification has already been determined and the assessor has no further discretion--assuming the taxpayer qualifies under the single parcel per county limitation, the reduced rate must be applied. I would conclude therefore that applying class rates is not assessment for purposes of the taxpayers' remedies under section 278.01.

The majority also employs an overbroad definition of the expression "levy of an illegal tax." For purposes of section 278.01, the term "levy" should be limited to the legislative determination to raise money by taxation. *See Saxhaug v. County of Jackson,* 215 Minn. 490, 494, 10 N.W.2d 722, 724 (1943) ("As applied to the determination to raise money by taxation, to levy a tax means to impose on persons or property by the exercise of legislative power a tax of a certain amount or of a certain percentage according to a determined tax base.").[1]

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[1] *See also Fichtner,* 271 Minn. at 266, 135 N.W.2d at 880; *State ex rel. Minneapolis Fire Dep't Relief Ass'n v. City Council of Minneapolis,* 161 Minn. 103, 105, 200 N.W. 932, 933 (1924).

Legislative levies are public information and are available to the taxpayer before the March 31 deadline set forth in section 278.01 arrives, as local jurisdictions must set their levies during the year taxes are assessed. Minn.Stat. § 275.065 (2000). Taxpayers have an opportunity to contest those levies at local meetings, Minn.Stat. § 275.065, subd. 6 (2000), and, if not satisfied, seek judicial review before March 31 of the following year when taxes are due, Minn.Stat.§ 278.01, subd. 1. Limiting the term "levy" to the legislative determination of the property tax rate has the added benefit of setting reasonable parameters on the scope of "illegal tax." Levy rates exceeding statutory authority are illegal, but also are determinable by the taxpayer before the March 31 deadline for challenge. If, as the majority holds, misapplication of a class rate is the levy of an illegal tax, and therefore the March 31 challenge deadline applies under 278.01, the taxpayer may not even know of the misapplication until the very day the tax notice is received.[2] Applying the statute of limitations set forth in section 278.01 to a claim that becomes knowable on the very date of expiration is an "absurdity too gross to be insisted on."[3]

Where the taxpayers unknowingly overpaid their taxes in reliance upon a nondiscretionary, ministerial act of a tax official incorrectly applying the class rate, as here, we have awarded taxpayers relief from property tax overpayments. In *Wheeler v. Board of Commissioners of Hennepin County,* a property owner applied to the county auditor for a statement showing the

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[2] Tax bills prepared by the county treasurer must be sent to the taxpayer no later than March 31. Minn.Stat. § 276.04, subd. 3 (2000).

[3] *Marbury v. Madison,* 5 U.S. (1 Cranch) 137, 177, 2 L.Ed. 60 (1803).

amount of property taxes due on his property for the year in question. 87 Minn. 243, 244, 91 N.W. 890, 890 (1902). The county auditor overstated the amount due, and the property owner paid the overstated tax. *Id.* We ordered the county to refund the overpayment because the property owner "could safely presume, when reading the statement * * * that the auditor had performed his duty * * *." *Id.* at 245, 91 N.W. at 890. We observed that the case before the court was distinguishable from those where the taxpayer paid the tax knowing it was incorrect and then sought equitable relief. *Id.* at 245-46, 91 N.W. at 890-91. The taxpayers here were similarly entitled to rely on the several property tax statements and assume that the assessors and auditors had properly discharged their duty and applied the correct class rates. The legislature has provided no judicial remedy to recover their overpayments,[4] and as the parties do not dispute that a taxpayer without an adequate statutory remedy may proceed in equity to seek recovery, I would hold they are entitled to do so under theories of common law or equitable relief.

PAGE, Justice (dissenting).

I join in the dissent of Justice Stringer.

GILBERT, Justice (dissenting).

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[4] It appears that the legislature may also have concluded that there was a need for relief, as in 2000 it adopted Minn.Stat. § 278.14 (2000), which provides that a county must refund a "mistakenly billed tax" as provided in the section. Act of May 15, 2000, ch. 490, art. 5, § 19, 2000 Minn. Laws 2014, 2086 (codified at Minn.Stat. § 278.14). While the question of whether a misapplied class rate is a "mistakenly billed tax" is not before us, adoption of section 278.14 suggests that the legislature saw the need to provide an administrative remedy for mistakenly billed taxes because a statutory remedy was not available under section 278.01.

I join in the dissent of Justice Stringer.

APPENDIX B

Court of Appeals of Minnesota.

PROGRAMMED LAND, INC., et al., Respondents,
v.
Patrick O'CONNOR, in his capacity as Treasurer and Auditor for Hennepin County, et al., Appellants;
and
Harold Christian, individually, and on behalf of all others similarly situated,
Respondent,
v.
Thomas Novak, in his capacity as Treasurer and Auditor for Dakota County, et al, Appellants.

Nos. CX-99-777, C7-99-1210.

Dec. 7, 1999.
Review Granted Feb. 23, 2000.

Syllabus by the Court

1. Minn.Stat. § 278.01 (1998) is not the exclusive remedy for property owners challenging errors in the application of statutory tax rates.

2. Minn.Stat. § 276.19 (1998) does not create a new cause of action by which property owners can recover overpaid taxes.

3. Minn.Stat. § 278.01 does not violate property owners' fundamental right to due process and does not create an impermissible classification in violation of equal protection.

4. If relief under Minn.Stat. § 278.01 is unavailable, a court may grant appropriate equitable relief.

Alan L. Kildow, John J. Steffenhagen, Sonya R. Braunschweig, Larkin, Hoffman, Daly & Lindgren, Ltd., Bloomington, MN; and Robert A. Hill, Robert Hill & Associates, Ltd., Minneapolis, MN; and Keith E. Simons, Keith E. Simons, P.A., Hopkins, MN (for respondents).

Amy Klobuchar, Hennepin County Attorney, Robert T. Rudy, Senior Assistant County Attorney, Mark K. Maher, Assistant County Attorney, Minneapolis, MN (for appellants Hennepin County, et al.).

James C. Backstrom, Dakota County Attorney, Jay R. Stassen, Assistant County Attorney, Hastings, MN (for appellants Dakota County, et al.).

Considered and decided by SCHUMACHER, Presiding Judge, RANDALL, Judge, and FOLEY,[1] Judge.

OPINION

RANDALL, Judge.

These consolidated cases are based on the miscalculation of property taxes by both Hennepin and Dakota Counties and the subsequent overpayment of taxes by owners of commercial and industrial properties. Hennepin County was denied summary judgment by the district court. In Dakota County, the

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[1] Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

case went to trial on stipulated facts, and the property owner was awarded judgment. Both counties appeal and argue that: (1) Minnesota Statutes chapter 278 provides the exclusive remedy by which property owners can recover overpayments; and (2) the statute of limitations for this remedy has passed. The counties argue the claims of constitutional violations and equitable relief are invalid. We affirm the decisions made by both the Dakota and Hennepin County district courts.

FACTS

I. Hennepin County

Each of the Hennepin County respondents is an owner of commercial or industrial property. Appellants are Hennepin County governmental officials and entities. Appellant Patrick O'Connor is the treasurer and auditor for Hennepin County. Appellant Hennepin County Board of Commissioners is the county's legislative and executive body that levies taxes on commercial, industrial, and utility property in Hennepin County.

Hennepin County respondents' tax payments are based on Hennepin County's yearly assessments of property classified as 3a under Minn.Stat. § 273.13, subd. 24 (1998). Respondents allege the inaccurate calculation of their yearly tax from 1987 to 1998, when respondents filed their complaint, resulted in the overpayment of property taxes of approximately $2,300 per respondent each year. Respondents, who relied on the accuracy of their property tax bills and paid the full amounts within the time prescribed by law, were not informed of the errors in the application of the tax rate.

Upon learning of the mistake in their tax bills, respondents informed appellants about the overpayment and requested reimbursement. Appellants refused to repay respondents. In

July 1998, respondents filed an amended complaint charging: (1) overpayment pursuant to Minn.Stat. § 276.19 (1998); (2) recovery of money paid by mistake; (3) recovery of money had and received; (4) breach of contract; (5) unjust enrichment; (6) recovery of excess taxes collected pursuant to Minn.Stat. § 275.26 (1998); (7) abatement of property tax pursuant to Minn.Stat. § 375.192 (1998); (8) violation of the Equal Protection Clause; (9) violation of the Due Process Clause of both the state and federal constitutions; and (10) violation of the Minnesota Constitution's Uniformity Clause.

In December 1998, the Hennepin County district court denied a motion to transfer this case to the Minnesota Tax Court. The supreme court also denied this request. Hennepin County moved for summary judgment, which was denied by the Hennepin County district court on April 19, 1999. At the same time, the Hennepin County district court granted respondents' motion to certify this case as a class action.

II. Dakota County

Respondent Harold Christian is an owner of commercial vacant land located in Dakota County. Originally, the suit included four individual owners, but the parties stipulated they would proceed to trial only on Christian's claim. The appellants are Thomas Novak, Dakota County Treasurer/Auditor, and Dakota County Board of Commissioners, the legislative body that levies that portion of the annual property taxes required for county expenditures on all non-exempt real property in Dakota County. The parties stipulated to findings of fact and proceeded with a bench trial.

In Dakota County, the assessor annually: (1) assigns a classification to each parcel of taxable real property; (2) calculates the market value of each parcel; (3) calculates the

net tax capacity of each parcel by multiplying the market value by the class rate or rates set by the legislature; and (4) provides the Dakota County Treasurer/Auditor with the total net tax capacity for each statutory classification of property. However, the assessor does not provide the treasurer/auditor with information on the class rates applied to each parcel to calculate the net tax capacity. This information is public, and anyone can receive this information by contacting the Dakota County Assessor's Office.

Beginning in 1993, Christian's property was classified as class 3a commercial property pursuant to Minn.Stat. § 273.13, subd. 24 (Supp.1993). In 1994, the Dakota County Assessor's Office sought clarification from the Minnesota Department of Revenue on how to apply the tax rates for class 3a property to vacant land. The revenue department issued a letter stating that vacant land is classified as commercial and should receive a 3% class rate on the first $100,000 of market value for one commercial class parcel, per county, per taxpayer. The commercial or industrial properties that received the 3% class rate were identified in 1993 property tax statements as "commercial preferred" or "industrial preferred."

To provide the information needed by the treasurer/auditor to prepare property tax statements, the assessor calculates the net tax capacity of each parcel by multiplying the market value by the applicable class rate or rates, and then adds together the net taxable values for all parcels to obtain the total net taxable capacity in Dakota County for that year. Christian paid the full amount applied to his property in 1993. However, in calculating the net tax capacity for the property to prepare the 1993 statement, the assessor applied a rate greater than 5.06% of the market value of the property. This amount was incorrect and overstated. Christian was not provided the 3% tax rate for

the first $100,000 of market value for any parcel of commercial property, and overpaid his 1993 taxes by $1,988.04.

Christian advised Dakota County of the 1993 error by filing a complaint in September 1997. The complaint contained substantially the same charges as the complaint later filed by other landowners in Hennepin County. Christian requested a refund, which Dakota County denied. Dakota County never notified Christian that any overpayment had occurred, nor did it provide Christian with any instructions on how to make a claim for the overpayment. However, in 1993, Christian received all notices and tax statements that Dakota County was required by statute to provide. Christian never filed a tax petition under Minnesota Statutes Chapter 278 for repayment of the 1993 taxes. However, he did file a petition under this chapter for the overpayment of 1994 taxes, which were refunded. After 1995, the Dakota County assessor correctly applied the 3% class rate.

The county filed a motion for summary judgment in district court, seeking dismissal of Christian's action and arguing that his failure to file a petition under chapter 278 for taxes payable in 1993 was a fatal flaw, depriving the district court of subject matter jurisdiction. In April 1998, the Dakota County district court denied this motion. After a trial on stipulated facts, the Dakota County district court ordered judgment for Christian in the amount of $1,988.04, plus prejudgment interest of $516.11 from October 15, 1993 through April 12, 1999. Judgment was entered on May 18, 1999.

Both Dakota and Hennepin Counties appealed from their respective district court decisions and the appeals were consolidated for argument and decision in this court.[2]

ISSUES

1. Did both the Hennepin and Dakota County district courts err by concluding that Minn.Stat. § 278.01 (1998) was not the exclusive remedy for contesting errors made when calculating respondents' property taxes?

2. Did the Hennepin County district court err by concluding that Minn.Stat. § 276.19 (1998) provides a remedy to recover overpayments?

3. Did the Hennepin County district court err by concluding that respondents could recover under their constitutional claims?

4. Did the Dakota County district court err by concluding Christian may recover in equity?

5. Can Hennepin County respondents recover through injunctive relief, declaratory judgment, or abatement?

ANALYSIS

A reviewing court is not bound by and need not give deference to a district court's decision on a purely legal issue.

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[2] Although orders denying motions for summary judgment are generally not appealable, we review the order denying Hennepin County summary judgment because Hennepin County based its summary judgment motion, in part, on governmental immunity and subject matter jurisdiction. *See McGowan v. Our Savior's Lutheran Church*, 527 N.W.2d 830, 832-33 (Minn.1995) (recognizing denials of summary judgment motion may be reviewed if motion based on governmental immunity or subject matter jurisdiction).

Frost-Benco Elec. Ass'n v. Minnesota Pub. Utils. Comm'n., 358 N.W.2d 639, 642 (Minn.1984). When a case was decided on stipulated facts, as was the claim brought in Dakota County, the only issue on appeal is whether the district court erred in its application of the law. *Fingerhut Corp. v. Suburban Nat'l Bank*, 460 N.W.2d 63, 65 (Minn.App.1990). However, if the appeal is from a denial of summary judgment, as is the appeal by Hennepin County, two questions are considered: (1) whether there are any genuine issues of material fact; and (2) whether the district court erred in its application of the law. *Gleason v. Metropolitan Council Transit Operations*, 582 N.W.2d 216, 218-19 (Minn.1998).

I. Exclusivity of Minn.Stat. § 278.01

Both Hennepin and Dakota County appellants argue that Minn.Stat. § 278.01 (1998)[3] provides the exclusive remedy for landowners challenging the calculation of property taxes. Section 278.01 states that a taxpayer may bring a claim in district or tax court alleging that property has been partially, unfairly, or unequally assessed in comparison with other property in the * * * county * * * or that the parcel has been assessed at a valuation greater than its real or actual value, or that the tax levied against the same is illegal, in whole or in part, or has been paid, or that the property is exempt from the tax so levied.

Minn.Stat. § 278.01, subd. 1. The petitioner must file an objection "on or before March 31 of the year in which the tax becomes payable." *Id.* It is settled that this statute is the

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[3] The Dakota County complaint was filed in 1997, and, therefore, the 1996 version of Minn.Stat. § 278.01 applies. But because the statute was not amended in 1997 or 1998, we will refer to the 1998 version.

exclusive remedy by which to challenge unfairly or unequally assessed realty. *Evanson v. Commissioner of Taxation*, 280 Minn. 559, 561, 159 N.W.2d 259, 261 (1968); *see also Fichtner v. Schiller*, 271 Minn. 263, 267, 135 N.W.2d 877, 880 (1965) (indicating statute exclusive remedy for challenge to lawfulness of tax); *Omdahl v. Hadler*, 459 N.W.2d 355, 360 (Minn.App.1990) (indicating statute applies to special assessments as well as general taxes).

Section 278.01 was originally enacted in 1935, and the Minnesota Supreme Court has explained that the legislative intent was to provide an adequate, speedy, and simple remedy for any taxpayer to have the validity of his claim, defense, or objections determined by the district court in matters where the taxpayer claims that his real estate has been partially, unfairly, or unequally assessed, or that it has been assessed at a value greater than its real or actual value, or that the tax levied against the property is illegal in whole or in part, or has been paid, or that the property is exempt from the tax so levied.

Land O'Lakes Dairy Co. v. Village of Sebeka, 225 Minn. 540, 548, 31 N.W.2d 660, 665 (1948). The dispositive question is whether the error by each county in overcharging the respondents is an "assessment error," so that relief can be sought only under Minn.Stat. § 278.01, or whether the error was simply a clerical or arithmetical mistake when applying statutory tax rates.

A. Progression of Minn.Stat. § 273.13

To better understand the parties' arguments, it is helpful to understand a portion of the history of section 273.13, which classifies property for taxation purposes.

The 1982 version of Minn.Stat. § 273.13 stated in pertinent part:

> (1) All property not included in the preceding classes shall constitute *class 4a* and shall be valued and assessed at 43 percent of the market value thereof, except as otherwise provided in this subdivision.
>
> * * * *
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> (3) Commercial and industrial property, except as provided in this subdivision, shall constitute *class 4c* and shall be valued and assessed at 40 percent of the first $50,000 of market value and 43 percent of the remainder, provided that in the case of state-assessed commercial or industrial property owned by one person or entity, only one parcel shall qualify for the 40 percent assessment, and in the case of other commercial or industrial property owned by one person or entity, only one parcel in each county shall qualify for the 40 percent assessment.

Minn.Stat. § 273.13, subd. 9 (1982) (emphasis added). In 1985, the statute was amended and reorganized to read in relevant part:

> Commercial and industrial property is *class 3a*. It is assessed at 28 percent of the first $60,000 of market value and 43 percent for the market value over $60,000. In the case of state-assessed commercial or industrial property owned by one person or entity, only one parcel may qualify for the 28 percent assessment. In the case of other commercial or industrial property owned by one person or entity, only one parcel in each county may qualify for the 28 percent assessment.

1985 Minn. Laws 1st Spec. Sess. ch. 14, art. 4, § 49 (emphasis added) (codified at Minn.Stat. § 273.13, subd. 24(a) (1986)).[4]

In 1993, the statute was amended to provide that if a taxpayer owned a parcel of non-state-assessed commercial, industrial, or utility property with a market value under $100,000 and owned additional parcels within the same town or city in a county, the reduced class rate would be applied up to a combined total market value of $100,000. 1993 Minn. Laws ch. 375, art. 5, § 24. To receive this reduced class rate on additional parcels, the taxpayer was required to notify the county that the taxpayer owned more than one qualifying parcel. *Id.* In 1997, the legislature deleted the language added in 1993 and amended the statute to provide that, with the exception of contiguous parcels owned by the same taxpayer, *each* parcel of commercial and industrial property would receive the reduced class rate on the first $150,000 of its market value. 1997 Minn. Laws ch. 231, art. 1, § 7.

B. Classification of Property

Appellants argue there are two classes within class 3a, one of which is "preferred." Specifically, Hennepin County argues that the 1982 classes 4a and 4c were combined into class 3a in 1985.

The legislature has wide discretion in classifying property for purposes of taxation, but the classification must be based on reasonable differences. *Montgomery Ward & Co. v. Commissioner of Taxation*, 216 Minn. 307, 309-10, 12 N.W.2d

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[4] This amendment became effective for taxes levied in 1986 and payable in 1987. 1985 Minn. Laws 1st Spec. Sess. ch. 14, art. 4, § 99.

625, 627 (1943). "[A] tax rate must operate without discrimination upon all property within a classification," and the classification shall not be unreasonable, arbitrary, or capricious. *Westling v. County of Mille Lacs*, 581 N.W.2d 815, 820 (Minn.1998) (citation omitted), *cert. denied*, 525 U.S. 1105, 119 S.Ct. 872, 142 L.Ed.2d 773 (1999).

The record reflects: (1) both Hennepin and Dakota County differentiated between the general class of 3a commercial and industrial properties and the commercial and industrial properties that received the lower tax rate by designating the properties that received the lower tax rate as "preferred"; (2) the lower tax rate based on ownership existed in 1982 when commercial and industrial properties were classified as 4c; and (3) a 1985 department of revenue publication indicates no substantial changes in this tax law were made when the statute was reorganized in 1985. Minnesota Dep't of Revenue, *Summary of Property Tax Law Changes Made in the 1985 Legislative Session* at 10 (1985). Combining 4a and 4c properties into class 3a did not alter the tax rates applied to commercial and industrial properties.

The only difference between the general pool of commercial and industrial 3a properties and the "preferred" 3a properties is that only one property per owner receives the lower tax rate. There is no reasonable difference between the commercial and industrial properties that do receive the lower tax rate and those that do not, indicating that the legislature did not intend to create two classifications of commercial and industrial property within class 3a. *See In re Cold Spring Granite Co.*, 271 Minn. 460, 466, 136 N.W.2d 782, 787 (1965) (stating propriety of classification for purpose of legislation is primarily for legislature); *Montgomery Ward*, 216 Minn. at 310-11, 12 N.W.2d at 627 (stating classification of subject

matter is permissible only if there is reasonable ground for making distinction). What Hennepin County describes as a "classification" is merely the practice of labeling those properties that receive the lower tax rate based on ownership as "preferred." That label makes it easier to identify the property. The Hennepin and Dakota County district courts correctly concluded that the "preferred" classification is artificial.

C. Duties of County Auditor and Assessor

Both Hennepin County and Dakota County appellants argue the underlying basis for respondents' claims is the duty of the county assessor to classify a parcel of land properly. They point out that the task of assessment includes the classification of ownership, and thus if a classification error occurs, it must be challenged using Minn.Stat. § 278.01. Both Hennepin County respondents and Christian argue the mistake was made by the county auditor in fixing the correct tax rate on each parcel.

This court has historically drawn a sharp distinction between the function of the assessor and that of the auditor. The assessor is entrusted with the responsibility of assessing property for the purpose of determining its value for taxation. In contrast, the auditor has the duty of calculating and assessing the taxes once the taxable value has been determined by the assessor.

Summit House Apartment Co. v. County of Hennepin, 312 Minn. 358, 362, 253 N.W.2d 127, 129 (1977) (citations omitted). All real property subject to taxation is listed by the auditor "to correspond with the assessment books in reference to ownership and description of property." Minn.Stat. § 275.28,

subd. 1 (1998);[5] *see also* Minn.Stat. § 273.01 (1998) (setting time for listing and assessment). Generally, the county auditor provides the assessment books annually, but a county may elect to establish an electronic data processing system in place of the assessment books. Minn.Stat. § 273.03, subds. 1, 2 (1998). The county assessor then has the duty to make all assessments and enter them into the assessment books furnished by the county auditor. Minn.Stat. § 273.061, subd. 9(a), (d) (1998). This assessment function has been explained as the process of going forward from the time the property is listed; of viewing the property, determining its true and full value, entering that value on the book opposite the description, entering the assessment in the assessment book and on the tabular statements for each book in correct balance.

B.W. & Leo Harris Co. v. Dakota County, 246 Minn. 20, 25, 74 N.W.2d 111, 114 (1955). Classification involves a factfinding responsibility and is not "simply an administrative calculation of the appropriate tax that may be performed by the auditor." *Summit House*, 312 Minn. at 362, 253 N.W.2d at 129; *see also* Minn.Stat. § 273.061, subds. 8, 8a, 9 (1998) (listing general duties and powers of assessor).

Once the assessor has assessed and classified the property, the assessor returns the assessment books to the county auditor. Minn.Stat. § 274.04, subd. 1 (1998). This is verified by an affidavit that states that the assessor has included a correct list of property and that the market value and net tax capacity are correct to the best of the assessor's knowledge. *Id.*

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[5] Although the complaints were filed in different years, for the sake of clarity, we will refer to the 1998 version of this statute, because no substantive changes were made to the statute in 1997 or 1998.

When the auditor receives the assessment books, the auditor shall examine them and correct any errors. Minn.Stat. §§ 274.08, .09 (1998).

> At any time before the final settlement with the county treasurer, the auditor shall charge the owners of the property on the tax lists with the proper amount of taxes.

Minn.Stat. § 274.09. "The rate percent of all taxes * * * shall be calculated and fixed by the county auditor * * * ." Minn.Stat. § 275.08, subd. 1 (1998).

Appellants argue the duties of assessor and auditor have become blurred in actual practice because the assessor calculates net tax capacity in the assessment books before returning them to the auditor. Thus, they argue that section 278.01 should be read broadly to include the calculation of net tax capacity as part of the assessment process, which can only be challenged under section 278.01. The stipulated facts in the Dakota County case establish that the Dakota County assessor calculates net tax capacity before returning the assessment books. Both the statutes and common practice indicate the assessor calculates net tax capacity before returning the assessment books to the auditor, but it is the auditor who has the final responsibility for tax calculation.[6]

It is a question of first impression for this court to determine whether to characterize the application of tax rates based on ownership under Minn.Stat. § 278.01, subd. 1, as an "unfair or unequal assessment." The assessor is charged with determining the correct market value and classification of

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[6] Because the auditor has the final responsibility for tax calculation, we reject respondents' argument that the system, in practice, produces an illegal delegation of calculation duties from auditor to assessor.

properties for taxation. Courts have interpreted the assessor's *classification* of properties as falling within the definition of "unfair or unequal assessment" under Minn.Stat. § 278.01, subd. 1. *See, e.g., Summit House*, 312 Minn. at 362, 253 N.W.2d at 129 (including classification as fact-finding task of assessor). *But unlike the determination of market value* and the classification of properties, *the correct application* of statutory tax rates is not discretionary.

The correct application of the statutory tax rates is an administrative function. The ultimate responsibility for this function has been given to the county auditor.[7] There is no evidence that the legislature contemplated that the auditor or assessor would incorrectly apply tax rates based on either a misunderstanding of the statute or a mathematical error. The error made when the counties applied statutory tax rates incorrectly does not constitute an "unfair or unequal assessment" and is not within the purview of section 278.01. Based on these facts, we hold that section 278.01 is not the exclusive remedy for these landowners to challenge a county's error in applying statutory tax rates. The Hennepin County and Dakota County district courts did not err by concluding that section 278.01 is not the exclusive remedy.

II. Minn.Stat. § 276.19 as Remedy for Overpayments

Appellants argue that Minn.Stat. § 276.19 (1998) does not provide a remedy for the overpayments. Although the Hennepin County district court ruled that this statute provided a remedy, the Dakota County district court did not discuss this issue. Thus, we will discuss this issue only as it relates to

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[7] When the offices of auditor and treasurer are combined, the statutory functions performed by the auditor will then be performed by the auditor-treasurer. Minn.Stat. § 375A.10, subd. 5 (1998).

Hennepin County. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn.1988) (stating appellate court generally may consider only issues presented to and considered by district court).

Section 276.19 entitled "Unclaimed Overpayments" states:

> If an overpayment of property tax arises on a parcel for any reason, the responsible county official shall promptly notify the payer by regular mail that the overpayment has occurred. The notice must state the amount of overpayment and identify the parcel on which the overpayment occurred. The notice must also instruct the payer how to claim the overpayment and advise that the overpayment is subject to forfeiture under this section.

Minn.Stat. § 276.19, subd. 1. The statute also describes the procedure applicable when the person entitled to a refund fails to claim it and controls the distribution of unclaimed refunds. *Id.*, subds. 2, 3. Chapter 278 describes remedies available to taxpayers whose properties have been incorrectly assessed or illegally taxed. *See* Minn.Stat. § 278.01, subd. 1 (providing remedy for improper assessments and tax levies). This chapter explains the procedure to be followed when a taxpayer has made an overpayment. Minn.Stat. § 278.12 (1998). Section 276.19 merely details the notification process the county must follow after realizing a taxpayer has overpaid. Minn.Stat. § 276.19. On their faces, chapter 278 and section 276.19 do not conflict.

> Statutes are said to be in *"pari materia"* when they relate to the same matter or subject even though some are specific and some general and even though they have not been enacted simultaneously and do not refer to each other expressly.

State ex rel. Carlton v. Weed, 208 Minn. 342, 344, 294 N.W. 370, 371-72 (1940) (citations omitted). It is presumed that statutes that relate to the same subject matter were enacted in accord with the same general legislative policy. *Id.* at 344, 294 N.W. at 372. Where two statutes in pari materia are construed together, and one statute contains provisions omitted from the other statute, the omitted provisions will be applied in proceedings involving the statute that does not contain the provisions, where not inconsistent with that statute's purposes. *Id.* at 346, 294 N.W. at 372.

Hennepin County respondents argue that the plain meaning of section 276.19 is clear and unambiguous and that it provides a separate cause of action for overpayments. *See State by Beaulieu v. RSJ, Inc.*, 552 N.W.2d 695, 701 (Minn.1996) (concluding if statute is unambiguous, court may engage in no further statutory construction and must apply plain meaning). Although the plain-meaning rule is well established, "our inquiry does not end with the literal words of the statute." *Wegener v. Commissioner of Revenue*, 505 N.W.2d 612, 614 (Minn.1993). The *Wegener* court reminds us:

> "[C]anons of construction are not the masters of the courts, but merely their servants, to aid them in ascertaining the legislative intent; and when it is ascertained the statute must be so construed as to give effect to such intention, even if it seem[s] contrary to such rules and the strict letter of the statute."

Id. (first alteration in original) (quoting *Winters v. City of Duluth*, 82 Minn. 127, 129, 84 N.W. 788, 789 (1901) (quotation omitted)).

The Minnesota Supreme Court has determined that the legislative intent of chapter 278 is "to provide an adequate,

speedy, and simple remedy for any taxpayer to have the validity of his claim * * * determined by the district court" in matters involving assessments. *Land O'Lakes*, 225 Minn. at 548, 31 N.W.2d at 665. To interpret section 276.19 as providing a cause of action for *all* overpayments, including those of assessment and illegal tax, would negate section 278.01 and directly contradict legislative intent. *See State v. Wagner*, 555 N.W.2d 752, 754 (Minn.App.1996) (noting interpretation that would give no effect to statute is to be avoided). This court will not consider section 276.19 independent of section 278.01. *See Wegener*, 505 N.W.2d at 614 (stating "a statute * * * cannot be considered independently of its subject matter" (quotation omitted)); *Grossman v. Aerial Farm Serv., Inc.*, 384 N.W.2d 488, 489 (Minn.App.1986) (stating it is assumed legislature will not engage in futile act nor assign statute intent that will bring about absurd result).

Section 276.19 establishes the notice procedures to be followed when a county discovers that a landowner has made an overpayment; this statute does not create an independent cause of action. If the legislature had intended section 276.19 to abrogate the longstanding rule in section 278.01, it would have expressly repealed section 278.01. The Hennepin County district court erred when concluding that Minn.Stat. § 276.19 established a separate cause of action.

III. Constitutional Claims

The Dakota County district court did not address the constitutional claims, but the Hennepin County district court concluded that Hennepin County respondents could recover on their constitutional claims. We will, therefore, limit our discussion to the Hennepin County case. *See Thiele*, 425 N.W.2d at 582 (holding only issues presented to and considered by district court will be considered on appeal).

A. Due Process

This court will exercise its power to find a law unconstitutional only when absolutely necessary and when the law is unconstitutional beyond a reasonable doubt, not merely because it may be bad policy or bad economics. *National Can Corp. v. Commissioner of Revenue*, 437 N.W.2d 416, 421 (Minn.1989). Respondents have the burden of demonstrating a violation of some provision of the Minnesota Constitution beyond a reasonable doubt. *See In re Haggerty*, 448 N.W.2d 363, 364 (Minn.1989) (stating party challenging statute has burden of demonstrating violation of Minnesota Constitution beyond reasonable doubt).

"[T]he due process clause requires that deprivation of property be preceded by notice and an opportunity for a hearing appropriate to the case." *Contos v. Herbst*, 278 N.W.2d 732, 742 (Minn.1979) (citation omitted). Hennepin County respondents allege inadequate notice was given in their tax statements to alert them that the calculation of their taxes was incorrect. Hennepin County respondents are essentially challenging the notice provision of Minn.Stat. § 276.04, subd. 2 (1998), which describes the necessary contents of tax statements. But Hennepin County respondents do not dispute that the statutorily mandated information was provided in their tax statements. Further, Hennepin County respondents do not cite any persuasive caselaw establishing that the notice provision of Minn.Stat. § 276.04, subd. 2, is unconstitutional. Hennepin County respondents also argue the one-year statute of limitations associated with a chapter 278 proceeding deprives them of their property without a hearing, essentially challenging the constitutionality of section 278.01. But Hennepin County respondents failed to cite any persuasive caselaw establishing

that the deadline for filing an objection under chapter 278 is unconstitutional.

Finally, Hennepin County respondents argue their fundamental right to due process was violated because there was no meaningful pre- deprivation opportunity to challenge the property taxes before paying them. Exaction of a tax constitutes a deprivation of property, and the state must provide procedural safeguards to satisfy due process. *McKesson Corp. v. Division of Alcoholic Beverages & Tobacco*, 496 U.S. 18, 36, 110 S.Ct. 2238, 2250, 110 L.Ed.2d 17 (1990). But the state need not provide a pre-deprivation process for challenging the validity of taxes. *Id.* at 37, 110 S.Ct. at 2250. In *McKesson* and cases that followed, a tax statute was first found to be unconstitutional, and only then did this determination trigger post- deprivation relief. *See Id.* at 31, 110 S.Ct. at 2247 (noting Florida Supreme Court first found tax statute unconstitutional); *see, e.g., Harper v. Virginia Dep't of Taxation*, 509 U.S. 86, 100, 113 S.Ct. 2510, 2519, 125 L.Ed.2d 74 (1993) (noting where tax statute first found unconstitutional, state law left to secure appropriate remedy for relief).

Finally, no court has invalidated a statute-of-limitations requirement under *McKesson*. *See Atkins v. Department of Revenue*, 320 Or. 713, 894 P.2d 449, 455-56 (1995) (declining to extend *McKesson* to invalidate statute of limitations in Oregon tax statute). The *McKesson* Court itself commented on a state's freedom to impose various procedural requirements on actions for post-deprivation relief stating, "[T]he State might, for example, * * * enforce relatively short statutes of limitations * * *." *McKesson*, 496 U.S. at 45, 110 S.Ct. at 2254-55. Hennepin County respondents have not demonstrated that they can prove either the notice requirement or the one-year statute of limitations is unconstitutional. The Hennepin County district

court erred when concluding that respondents could recover for a denial of due process.

B. Equal Protection

Hennepin County respondents argue the distinction between the taxpayers who received the tax break on one parcel of property and respondents, who did not, is arbitrary and violates the Uniformity Clause of the Minnesota Constitution and the Equal Protection Clause of the United States Constitution. Minn. Const. art. X, § 1; U.S. Const. amend. XIV. Although respondents claim they are not challenging the validity of section 278.01, they do not deny they must prove beyond a reasonable doubt that: (1) at least two classes are created by the statute; (2) the classes are treated differently under the statute; and (3) the difference in treatment cannot be justified. *See Westling*, 581 N.W.2d at 820 (explaining test under which statute may be found unconstitutional as violation of equal protection).

Hennepin County respondents' equal-protection claim fails because they cannot meet the first requirement. The legislature did not create two separate classes of commercial or industrial property within class 3a. Hennepin County respondents do not argue this point, but argue that Hennepin County appellants' mistakes when applying the statute created the arbitrary classification. But appellants cannot create a classification where the legislature has not already done so. *See Cold Spring Granite Co.*, 271 Minn. at 466, 136 N.W.2d at 787 (stating propriety of classification for purpose of legislation is primarily for legislature). Respondents have not proved beyond a reasonable doubt that appellants have violated their equal-protection rights. Thus, the Hennepin County district

court erred by concluding that respondents can recover under their constitutional claims of equal protection or due process.[8]

IV. Equitable Remedies

Both Hennepin and Dakota County appellants argue that respondents cannot recover under the equitable theories charged in the complaints. Both Hennepin and Dakota County respondents requested relief under the equitable theories of: (1) recovery of money had and received; (2) recovery of money paid by mistake; (3) breach of an implied-in-law contract; and (4) unjust enrichment. Generally, a taxpayer may not maintain a suit in equity to recover tax payments if the taxpayer has a remedy at law. *See Adelman v. Onischuk*, 271 Minn. 216, 228, 135 N.W.2d 670, 678 (1965) (stating "relief against erroneous or illegal assessments will not be granted by a court of equity if the property owner has an adequate remedy at law"); *Rosso v. Village of Brooklyn Ctr.*, 214 Minn. 364, 368, 8 N.W.2d 219, 221 (1943) (emphasizing taxpayer may not maintain suit in equity to enjoin collection of tax or assessment when there exists adequate remedy at law). But under these circumstances, we conclude that respondents have valid claims in equity because they cannot recover under section 278.01 for the errors made by the counties when computing their taxes.

The Dakota County district court concluded that Christian could recover under the theory of money had and received. The district court reasoned that Christian paid his taxes under a mistake of fact because he justifiably relied on the correctness of his tax statement. *See Sloan v. City of Duluth*, 194 Minn.

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[8] Because Hennepin County respondents' constitutional claims fail on the merits, we will not address Hennepin County's claim of governmental immunity or its claim under the Tax Injunction Act, 28 U.S.C. § 1341 (1994).

48, 54, 259 N.W. 393, 396 (1935) (noting city officers had knowledge of credits to which taxpayer entitled and noting it was not probable taxpayer would knowingly pay anything in excess of legal requirement). Dakota County appellants dispute this conclusion, arguing the assessor made a mistake of law, because prior to 1994, the assessor misunderstood how to apply the statute. Even if we were to accept that the assessor made a mistake of law, Minnesota courts have determined that equity can grant relief from a unilateral mistake of law. *Peterson v. First Nat'l Bank*, 162 Minn. 369, 376, 203 N.W. 53, 55 (1925); *see also Minnesota Mut. Fire & Cas. Co. v. Rudzinski*, 347 N.W.2d 848, 851 (Minn.App.1984) (holding equity can grant relief from mutual mistake of law even if mistake of fact is not present), *review denied* (Minn. Dec. 20, 1984). Thus, the district court can grant relief under this theory. We affirm the Dakota County district court's conclusion that Christian can recover under the theory of money had and received.

Although the Hennepin County district court refused to grant summary judgment to appellants, it did not specifically address respondents' equitable theories. But it is clear that because equitable relief is not barred, respondents may recover their overpayments if they are able to prove one of the equitable theories charged in their complaint. Although we have concluded the Hennepin County respondents cannot recover under section 276.19 or under their constitutional theories, the Hennepin County district court properly refused to dismiss all equitable claims on summary judgment.

Finally, Dakota County argues relief under the equitable theories is barred by laches. We are not sure how Dakota County reaches this argument. But we need not address it. The Dakota County District Court did not address the application of the doctrine of laches to the case before it.

Therefore, we will not consider the doctrine's application. *See Thiele*, 425 N.W.2d at 580 (stating appellate court generally may consider only issues raised to and *considered by* the district court).

V. Injunctive Relief, Declaratory Judgment, and Abatement

Hennepin County appellants argue that Hennepin County respondents' claims for injunctive relief and declaratory judgment are invalid because respondents are limited to claims under section 278.01. *See* Minn.Stat. § 275.26 (1998) (stating if county levied excess taxes, taxpayer may bring action to enjoin collection of such taxes and correct levy); Minn.Stat. ch. 555.01-.16 (1998) (Uniform Declaratory Judgments Act). Because we have rejected appellants' argument that section 278.01 is the exclusive remedy by which Hennepin County respondents can challenge the errors made in calculating their taxes, this relief is theoretically possible. However, injunctive or declaratory relief will be unnecessary unless the respondents establish that the counties continue to tax them improperly.

Hennepin County appellants argue that Hennepin County respondents' demand for abatement under Minn.Stat. § 375.192, subd. 2 (1998), fails to state a claim on which relief can be granted and the district court lacks jurisdiction to entertain this claim. Hennepin County respondents requested abatement for 1994 and 1995. Their 1996 abatements were granted. An abatement for clerical errors may be considered and granted for the year of application as well as for the two prior years. Minn.Stat. § 375.192, subd. 2. A clerical error is defined as "a mistake in the clerical work of transcribing the particular record." *Wilson v. City of Fergus Falls*, 181 Minn. 329, 332, 232 N.W. 322, 323 (1930).

Hennepin County has not explained how the errors in establishing the tax obligations for the respondents were made. Accordingly, Hennepin County respondents may recover if they can establish that the mistake was the result of a clerical error. This material question of fact precludes summary judgment for Hennepin County.

DECISION

Minn.Stat. § 278.01 (1998) is not the exclusive remedy by which respondents can challenge errors made when calculating their property taxes. We affirm the Dakota County district court's decision that Christian can recover in equity. We also affirm the Hennepin County district court's denial of summary judgment. Although Hennepin County respondents cannot recover under Minn.Stat. § 276.19 (1998) or on constitutional grounds, they may be able to recover in equity or by abatement.

Affirmed.

DANIEL F. FOLEY, Judge (dissenting).

I respectfully dissent. I would hold that Minn.Stat. § 278.01 (1998)[1] is the exclusive remedy under which Hennepin and Dakota County respondents can recover the overpayments. I agree with the majority that the legislature did not create a "preferred" classification within class 3a properties. But I do not agree that the legislature intended that a taxpayer could challenge overpayments by any remedy other than section 278.01.

A taxpayer may bring a claim in district or tax court for property [that] has been partially, unfairly, or unequally

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[1] Although the Hennepin County and Dakota County complaints were filed in different years, I will use the 1998 statute because it does not substantially change this analysis.

assessed in comparison with other property in the * * * county * * * or that the parcel has been assessed at a valuation greater than its real or actual value, or that the tax levied against the same is illegal, in whole or in part, or has been paid, or that the property is exempt from the tax so levied * * *.

Minn.Stat. § 278.01, subd. 1. The legislature enacted this statute to "provide an adequate, speedy, and simple remedy for any taxpayer to have the validity of his claim, defense, or objections determined by the district court." *Land O'Lakes Dairy Co. v. Village of Sebeka,* 225 Minn. 540, 548, 31 N.W.2d 660, 665 (1948). The legislature broadly included assessment errors, illegal taxes, and exemptions from tax. I believe that the legislature intended for all errors made during the assessment process to be included under this statute.

The duties of the county assessor have been historically viewed as fact-finding responsibilities. *See B.W. & Leo Harris Co. v. Dakota County,* 246 Minn. 20, 25, 74 N.W.2d 111, 114 (1955) (describing assessor's fact-finding duties of viewing property, determining value, and entering value in assessment books). Classification of properties is a fact-finding process included among the assessment duties of the county assessor and can only be challenged under section 278.01. *Summit House Apartment Co. v. Hennepin County,* 312 Minn. 358, 362, 253 N.W.2d 127, 129 (1977). Similarly, whether or not a taxpayer receives a tax break based on ownership under Minn.Stat. § 273.13, subd. 24(a) (Supp.1993) is a fact-finding responsibility. The record reflects: (1) in both Hennepin and Dakota Counties, the county assessor is responsible for determining whether a property receives the lower tax rate based on ownership; (2) although the auditor provides the ownership lists, in Hennepin County the lists are updated by the assessor's office; and (3) in both Hennepin and Dakota

Counties, the tax rates based on ownership are applied in the assessment books before they are returned to the county auditor. The county auditor has been given the responsibility of overseeing the assessor's duties. *See* Minn.Stat. §§ 274.05, .09 (1998) (detailing procedure when auditor receives assessment books from assessor, noting that auditor should examine books and correct any errors). But the county assessor makes the initial determination of whether one taxpayer owns multiple properties, and is entitled to a lower tax rate on one of those properties. This fact-finding responsibility is an assessment duty that may only be challenged under section 278.01.

Because I believe section 278.01 is the exclusive remedy by which respondents can challenge the discrepancies in their tax bills, the statute of limitations has passed, and relief is barred. Minn.Stat. § 278.01, subd. 1. As a result, respondents cannot recover under any equitable theories or by abatement. *See Rosso v. Village of Brooklyn Center,* 214 Minn. 364, 367, 8 N.W.2d 219, 221 (1943) (holding taxpayer cannot maintain suit in equity to enjoin tax collection when an adequate remedy at law exists).

APPENDIX C

STATE OF MINNESOTA
COUNTY OF DAKOTA
DISTRICT COURT
FIRST JUDICIAL DISTRICT

Harold Christian, individually, and on behalf of all others similarly situated, *Plaintiffs,*

v.

Thomas Novak, in his capacity as Treasurer and Auditor for Dakota County; Dakota County Board of Commissioners; and Dakota County, Minnesota, *Defendants.*

File No. 19-C4-97-9320

ORDER AND MEMORANDUM

The above-entitled matter came before the Honorable Thomas G. McCarthy, Judge of District Court, on January 20, 1999, at the Dakota County Government Center, Hastings, Minnesota.

Robert Hill appeared on behalf of the Plaintiff.

Jay Stassen appeared on behalf of the Defendants.

Based upon the proceedings, this court makes the following:

FINDINGS OF FACT

1. Plaintiff Harold Christian (the "Plaintiff") is a 75-year old retired individual who is a citizen of the State of Minnesota, residing at 4460 McColl Drive, Savage, Minnesota 55378-1544.

2. Defendant Thomas Novak is the Dakota County Treasurer-Auditor, a position that includes the duties of the county treasurer an county auditor.

3. Defendant Dakota County Board of Commissioners is the legislative body that levies that portion of the annual property taxes required for county expenditures upon all non-exempt real property in Dakota County.

4. The Plaintiff is the owner of commercial vacant land located in Dakota County, within the City of Burnsville, Minnesota. The Property is described for property tax purposes as:

> SECTION 14 TWN 115 RANGE 21 E 250 FT OF W 650 FT OF RTH #101 Ex Ft lying S OF LINE BEG E 1411521

(hereinafter referred to as the "Property.")

5. The Plaintiff purchased the Property pursuant to a warranty deed dated September 7, 1971. The Property was owned continuously by the Plaintiff from the time of purchase until 11997 when the Plaintiff sold the Property. at all times relevant to this lawsuit, the Property was unimproved vacant land.

6. The Property owned by the Plaintiff was designated by Dakota County with Property Identification no. 02-01400-010-02 and 02-01400-010-08,

7. For taxes payable in 1992, the Property was classified by the Dakota County assessor pursuant to Minn. Stat. § 273.13, Subd. 31, as Class 5, Vacant Land.

8. During the 1991 legislative session, the Minnesota Legislature abolished the Vacant Land classification, effective for taxes payable in 1993. The Minnesota Department of Revenue did not provide direction to the counties as to the proper class rates to be applied to vacant land that was classified as commercial for taxes payable in 1993 (hereinafter the "Pay '93 taxes").

9. For the pay '93 taxes, the Property was classified by the Dakota County Assessor pursuant to Minn. Stat. § 273.13, Subd. 24, as Class 3(a), Commercial Property (hereinafter referred to as "Class 3(a)").

10. In Dakota County, the Assessor completes four tasks for taxable real property each year: (1) assigns a classification to each parcel; (2) calculates the market value of each parcel; (3) calculates the net tax capacity of each parcel by multiplying the market value by the class rate or rates as set by the legislature; and (4) provides that Dakota County Treasurer-Auditor with the total net tax capacity for each statutory classification of property for that year.

11. The Dakota County Assessor does not provide the Dakota County Treasurer-Auditor with information indicating which class rates were applied to each parcel to calculate the net tax capacity. Since this information is public, any person, including the Plaintiff and the Dakota County Treasurer-Auditor, could have received an explanation of the class rates that were applied to the Property by contacting the Dakota County Assessor's Office. *See* Exhibit 12.

12. Those commercial properties or industrial properties that received the 3 percent class rate on the first $100,000 in value were identified by the Dakota County Assessor in the Notice of Assessed Value forms and the 1993 Property Tax Statements prepared by Dakota County as a classification called "commercial preferred" or "industrial preferred."

13. In 1994, the Dakota County Assessors Office sought clarification from the Minnesota Department of Revenue on how to apply the class rates for Class 3(a) property to vacant land. This letter was submitted as Exhibit 13. In response, the Minnesota Department of Revenue issued a letter informing the Dakota County Assessor that Vacant Land that is classified as commercial should receive a 3 percent class rate on the first $100,000 of market value for one commercial class parcel, per county, per taxpayer. This letter was submitted as Exhibit 14.

14. From the time of purchase to 1997, the Plaintiff has paid property taxes on the Property. Submitted to the Court as Exhibits were copies of the following:

Exhibit	Document Description	Tax Year Payable
2	Notice of Assessment	1989
3	Property Tax Statement	1992
4	Notice of Assessment	1993
5	Property Tax Statement	1993
6	Notice of Assessment	1994
7	Revised Notice of Assessment	1994
8	Stipulation, Order for Judgement and Judgement	1994
9	"Understanding your Property Assessment," property tax brochure issued by Dakota County	

10 "Property Tax Timeline For the Assessment, Levy and Collection of Property Taxes In Minnesota" for the 1992/Pay '93 Tax Year

15. The Plaintiff paid property taxes for assessment year 1992, payable in 1993 on the Property on the basis of its Class 3(a) "Commercial" classification.

16. The County Treasurer-Auditor mailed Exhibit 5, the 1993 Property Tax Statement (the "93 Statement") to the Plaintiff. Using information provided by the County Assessor, the 93 Statement was prepared by or under the authority of Defendant Thomas Novak, as Treasurer-Auditor of Dakota County.

17. To provide the information needed by the Treasurer-Auditor to prepare the property tax statements, the Dakota County Assessor calculates the net tax capacity of each parcel by multiplying the market value by the applicable class rate or rates, and then sums the net taxable values for all parcels to obtain the total net taxable capacity in Dakota County for that year.

18. The 93 Statement informed the Plaintiff that $7,070.20 ($3,783.18 on parcel 1 + $3,287.02 on parcel 2) was due to Dakota County for property taxes on the Property for the year Pay '93 taxes, and the Plaintiff relied upon the accuracy of the information contained in the 93 Statement he received. The Plaintiff paid the $7,070.20 in full within the time prescribed by law.

19. In calculating the net tax capacity for the Property that was used by the Dakota County Treasurer-Auditor to prepare the 93 Statement for the Property, the Dakota County Assessor

applied a rate greater than 5.06 percent on the entire market value of the Property.

20. The net tax capacity calculated by the Dakota County Assessor for the Property, and the amount of the taxes owed as listed in the 93 Statement the Defendants sent to the Plaintiff were incorrect and overstated the amount due.

21. The 93 Statement and the payment by the Plaintiff of the amount Defendants indicated was due, resulted in payment to the Defendants by the Plaintiff of more than would otherwise have been due had the Dakota County Assessor applied the 3 percent class rate to the first $100,000 of market value and the 5.06 percent class rate on the remaining market value on one of the Plaintiff's parcels for Pay '93 taxes.

22. Applying Minnesota Statutes Section 273.13, Subd. 24 correctly, would have resulted in a tax owing by Plaintiff of $5,082.16 ($100,000 at 3.0% + $23,700 at 4.6%). Thus, Plaintiff overpaid his pay '93 taxes by $1,988.04.

23. The Notice of Assessed Value and the Property Tax Statement for Pay '93 taxes that the Plaintiff received for the Property included a statement of the classification that the Dakota County Assessor applied to the Property, but did not include the specific class rates that the Assessor used to calculate the net tax capacity for the Property.

24. By filing this action, the Plaintiff advised the Defendants of the error in the 93 Statement and the resulting payment by the Plaintiff of an amount other than that prescribed by statute for Pay '93 taxes.

25. By filing this action, the Plaintiff has requested that the Defendants repay Plaintiff all amounts that exceeded those prescribed by statute for Pay '93 taxes.

26. In responding to this action, the Defendants have declined to repay to the Plaintiff amounts that exceeded those prescribed by statute for Pay '93 taxes.

27. The Defendants have never provided the Plaintiff with notice of amounts paid by the Plaintiff that exceeded those prescribed by statute for Pay '93 taxes.

28. Based upon the Notice of Assessed Value and the 93 Tax Statement that the Defendants sent to the Plaintiff, the Plaintiff did not have actual knowledge of the class rate actually applied for Pay '93 taxes on the Property.

29. Many owners of commercial property within Class 3(a) in Dakota county were provided the 3 percent class rate on the first $100,000 of market value, and the 4.7 percent class rate on the remaining market value exceeding $100,000, as prescribed by statute for Pay '93 taxes. The 1993 property tax statements for these parcels identified the classification to be "Preferred Commercial." *See* Exhibit 15.

30. The Plaintiff was not provided the 3 percent class rate on the first $100,000 of the market value for any parcel of commercial property Plaintiff owned by Pay '93 taxes.

31. By filing this action, the Defendants have been informed of the Plaintiff's claim of overpayment for Pay '93 taxes, and the name and address of the Plaintiff.

32. The Defendants never notified the Plaintiff by regular mail that an overpayment occurred for Pay '93 taxes.

33. The Defendants never provided the Plaintiff with any notice stating the amount of overpayment and have not identified the parcels on which an overpayment occurred for Pay '93 taxes.

34. After the Plaintiff paid the amount stated as due on the 93 Statement, the Defendants never provided the Plaintiff with any notice instructing the Plaintiff on how to claim the overpayment under Minn. Stat. § 276.19. Prior to the commencement of this action, the Defendants were not aware that the Dakota County Assessor calculated a net tax capacity for the Property that was greater than that prescribed by statute by misapplying the class rates for commercial property, and that the 93 Statement overstated the amount due for Pay '93 taxes as a result.

35. When refunds of tax payments have been provided in the past, Dakota County has not identified Minn. Stat. § 276.19 as the basis for the authority to refund overpayments.

36. For Pay '93 taxes, the Plaintiff received all notices and tax statements that the Defendants were required by statute to provide.

37. The Plaintiff did not file a tax petition under Minn. Stat. Chapter 278 for Pay 93 taxes on the Property.

38. The Plaintiff filed a tax petition under Minn. Stat. Chapter 278 for Pay 94 taxes challenging the calculation of the net tax capacity and the taxes payable in 1994 on the Property. Pursuant to this petition, Dakota county corrected the amount of taxes due for 1994 by adjusting the net tax capacity to include the 3 percent class rate on the first $100,000 in market value for Plaintiff's contiguous parcels. *See* Exhibit 8.

39. For taxes payable in 1995 and thereafter, the Dakota County Assessor correctly applied the 3 percent class rate to the first $100,000 of market value on the Property.

40. Plaintiff is entitled to prejudgement interest from October 15, 1993 to April 12, 1999, interest at the judgment rate for a total of $516.11.

Based upon the proceedings, this Court makes the following:

CONCLUSIONS OF LAW

1. The error that occurred causing Plaintiff's tax liability to be overstated for the Pay '93 and '94 years was the result of an arithmetic error.

2. The error that occurred causing Plaintiff's tax liability to be overstated for the Pay '93 and '94 years did not occur in the classification phase of the levying process.

3. The Plaintiff was entitled to rely on the tax statement he received from the Defendants as a true and accurate statement of his tax liability for the Pay '93 tax year.

4. As a result, the Plaintiff made payments for the Pay '93 tax year under a mistake of fact.

5. Minn. Stat. §278.01 does not provide a remedy in these circumstances.

6. The Defendants may not keep the overpayments Plaintiff made in the Pay '93 tax year.

7. The Plaintiff mistakenly overpaid his Pay '93 property taxes in the amount of $1,988.04. Plaintiff is further entitled to prejudgment interest in the sum of $516.11, through April 12, 1999.

8. Plaintiff is awarded judgment in the amount of $1,988.04, plus prejudgement interest in the amount of $516.11.

9. The attached memorandum is incorporated by reference.

LET JUDGMENT BE ENTERED ACCORDINGLY, after a stay of 30 days.

Dated: April 12, 1999 BY THE COURT:

/s/ THOMAS G. MCCARTHY
Judge of District Court

JUDGMENT

The foregoing shall constitute the Judgment of the Court.

Entered:_____ Van Bronston,
Court Administrator

By:_____
Deputy

MEMORANDUM

This case presents a unique and heretofore unconsidered question to the Court. The Plaintiff, Harold Christian, filed this case claiming that he overpaid the property taxes on two parcels of vacant commercial land he owns in Dakota County. He claims this was the result of a mistake made by the Defendant County leading to his receipt of a property tax bill that overstated the amount he owed. The County does not dispute either that a mistake was made in producing the property tax bill, or that Mr. Christian paid an amount in excess of that which he owed. However, the County claims that Minn. Stat. § 278.01, which provides for a petition process by which taxpayers may recover taxes they believe they do not owe, is the exclusive remedy available to Mr. Christian.[1] Mr. Christian did not comply with this statute by filing the proper petition with the County within the time the statute specifies. As a result, the County reasons, Mr. Christian has waived his right to recover his money and should not be able to recover the excess he paid in through a separate suit. After careful consideration of the facts of this case, the record and all the supporting documents, this Court concludes that Minn. Stat. §

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[1] Minn. Stat. § 278.01, subd. 1 states:

> Any person having personal property, or any estate, right, title, or interest in or lien upon any parcel of land, who claims that such property has been partially, unfairly, or unequally assessed in comparison with other property in the . . . county . . . or that the parcel has been assessed at a valuation greater than its real or actual value, or that the tax levied against the same is illegal, in whole or in part, or has been paid, or that the property is exempt from the tax so levied, may have the validity of the claim, defense, or objection determined by the district court of the county in which the tax is levied or by the tax court. . . .

278.01 does not provide the exclusive remedy in this case. For the reasons set forth below, the Court enters judgment in favor of Mr. Christian.

Minnesota Statute § 278.01, subd. 1 provides the procedure for the recovery of taxes in five separate situations:

1. a party claims that the property has been assessed unfairly with respect to other property similar to it within the taxing authority's control;
2. a party claims that the parcel has been assessed at a valuation greater than its real or actual value;
3. a party claims the tax levied against the property is illegal;
4. a party claims the tax has already been paid; or
5. a party claims that the property is exempt from the tax.

The parties only argued that one of the above situations might apply to this case: that the property had been assessed unfairly with respect to other similar property.[2] Essentially, the County argued that this mistake should be considered one of classification. A mistake in classifying the property would indicate Christian's property was assessed unfairly with respect to other similar property. The County argues that the Assessor made a classification mistake early in the tax levying process. That mistake, the County argues, was perpetuated throughout the process resulting in the overstated tax bill sent to Christian.

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[2] Another possibility that would bring this case under the umbrella of Minn. Stat. § 278.01 is that Christian is essentially claiming the tax is "illegal." However, it is clear that Christian is not claiming that the legislature overstepped the bounds of its authority in enacting the property tax statutes, nor is there any other reason to believe that the tax as applied to Christian's property was "illegal' per se.

Christian, on the other hand, argues that the mistake was not one of misclassification, but of simple arithmetic and therefore that none of the enumerated scenarios apply.

A. The Proper Characterization of the County's Mistake

Minnesota Statute § 273.13 was amended in 1991 to abolish the Vacant Land classification. Up to that time, Christian's property had been classified as Vacant Land under Minn. Stat. § 273.13, subd. 31(c); while the County was not given express instructions as to how to classify the property thereafter, Christian's property was classified as Class 3(a) Commercial Property. Property that was classified as Commercial Property for the Pay '93 tax year was granted a lower 3% tax rate on the first $100,000 of its market value.[3] Christian's property was not given the benefit of this lower tax rate on any of his property for the Pay '93 or Pay '94 tax years.[4]

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[3] In 1993, Minn. Stat. § 273.13, subd. 24, stated in relevant part:

Class 3. (a) Commercial and industrial property . . . is class 3(a). It has a class rate of 3.3 percent of the first $100,000 of market value for taxes payable in 1990, 3.2 percent for taxes payable in 1991, 3.1 percent for taxes payable in 1992, and three percent for taxes payable in 1993 and thereafter, and 5.02 percent of the market value over $100,000.

[4] The County asserts that, for Pay '93 taxes, Christian was entitled to the 3 percent "commercial preferred" class rate on only one of the two parcels since the lower rate was to be provided to only once parcel, per taxpayer, per County. The Plaintiff asserts that the applicable statutes require the application of the 3 percent class rate to both parcels up to a total of $100,000 in market value since these were contiguous parcels and because Defendants themselves interpreted the statute in this manner when they refunded the excess payment Plaintiff made to Defendants in 1994. *See* Exhibit 8. The

The County claims, in short, that the 3% rate on the first $100,000 of property was a separate classification from the Commercial Property that did not receive the 3% rate and that applying the proper tax rate to real property is a function of the Assessor's classification duties.[5] The County asserts that this is the sort of error to which Minn. Stat. § 278.01 was intended to apply.

The Court disagrees. This case is better characterized as a case of overpayment of taxes resulting from the County's failure to properly apply the appropriate statutory rate. The County Auditor failed to ensure that the correct rate had been applied to the property. Throughout this proceeding, the county has insisted on referring to the property that received the lower three percent tax as "preferred commercial property." However, in looking at Minn. Stat. § 278.13, subd. 24(a), this Court notes that the legislature appears to have provided for only one class of Commercial Property: "Commercial and industrial property . . . is class 3(a). It has a class rate of . . . three percent for taxes payable in 1993 and thereafter, and 5.02 percent of the market value over $100,000." The County has cited no authority to support the proposition that a classification that received one tax rate up to a specified dollar amount and a higher tax rate thereafter is in fact two classifications.

Court finds Plaintiff's position compelling on this issue.

[5] "The County asserts that the problem arose from a classification error by the County's Assessor's Office when it failed to identify Christian's parcel as 'preferred' commercial property and thereby failed to include it among those properties that were entitled to the lower 3 percent tax rate on the first $100,000 in value. Errors in the application of the classification statute, Minn. Stat. § 273.13, must be appealed utilizing the procedures in Minn. Stat. § 278.01." Defendant's Trial Memorandum, p. 4.

Furthermore, the County has cited no authority stating that the assessor or the auditor may create classifications other than those designated by the legislature. The Court believes that the Auditor had an affirmative duty to ensure that the tax statements it sent to Dakota County taxpayers were accurate and correct, and furthermore, the taxpayers had the right to rely upon those tax statements did, in fact, state the correct amount of tax owing.

The County cites *Summit House Apartment Company* v. County *of Hennepin*, 253 N.W.2d 127, 312 Minn. 358 (Minn. 1977) as a case which supports it contention that the Assessor's classification duties include applying the proper tax rate within a class. However, this case is distinguishable from the case at bar. In the *Summit* case, the petitioners maintained that they were entitled to a lower tax rate on their apartment buildings. The legislature required that apartment buildings fulfilled several requirements relating to their construction in order to qualify for the lower tax rate. In response to these requirements, the Supreme Court stated:

> The task of classification also involves a factfinding responsibility and is not, at the taxpayer seems to argue, simply an administrative calculation of the appropriate tax that may be performed by the auditor. Whether a particular apartment building qualifies for the 25-percent classification under § 273.13, subd. 20, clearly depends on a wide range of factual judgments concerning compliance with specified statutory criteria.

253 N.W.2d 127, 129, 312 Minn. 358, 362-363. In fact, this case does more to support Christian's position than undermine it. The "factfinding" the assessor was required to do in *Summit* in order to apply the proper tax rate is analogous to the initial, outright classification each property must undergo It is not

analogous to the rate application in this case. Here, the County had only to determine that Christian's property fit into the broad "3(a)" commercial classification and then apply the three percent rate to the first eligible $100,000 dollars. In *Summit*, the Assessor was required to continue the *classification* process after determining that the property fit into the proper class by making factual findings pertaining to the construction of the apartment buildings. As a result, a misapplication of the statutory rate could have been the result of an errant observation of the materials and height of the building. Furthermore, it appears that the Supreme Court viewed the structural requirements for the lower rate as creating a separate class within the broader subdivision 20 class. In our case, there were no requirements beyond being classified "3(a)" commercial property to have received the three percent rate.

The County argues that the auditor and assessor's roles have merged in many ways, thus blurring the distinction between what is a classification function subject to Section 278.01 and what is a traditional function of the auditor that may not be subject to that statute. The *Summit* court stated:

> This court has historically drawn a sharp distinction between the function of the assessor and that of the auditor. The assessor is entrusted with the responsibility of assessing property for the purpose of determining its value for taxation. In contrast, the auditor has the duty of calculating and assessing the taxes once the taxable value has been determined by the assessor.

253 N.W.2d 127, 129, 312 Minn. 358, 362. Nonetheless, the County cites statutory law indicating the legislature's intent to allow the auditor's and assessor's roles to merge, thereby relieving the auditor from its statutory obligation to make sure the proper statutory rate are applied to each property. Minn.

Stat. § 273.03, subd. 1, requires the auditor to prepare and maintain assessments books and forms to be used by the auditor. However, subdivision 2 of that statute allows the discontinuation of this practice where the county employs a computerized system to track property values, classification and net tax capacity of taxable property. Also, Minn. Stat. § 273.17, subd. 1, took the responsibility for calculating the net tax capacities for properties not on the previous year's roll in counties using a computerized property tracking system away from the auditor and has allowed the assessor to track the newly affected properties. The County would have the Court believe that this indicates the Auditor in Dakota County was not responsible for ensuring that the tax statements sent to property owners were accurate. However, Minn. Stat. § 275.08, subd. 1a, indicates otherwise. It states: "...For taxes payable in 1990 and subsequent years, the county auditor shall compute the net tax capacity for each parcel according to the rates specified in section 273.13. The net tax capacity will be the appropriate rate multiplied by he parcel's market value." (emphasis added). In light of the fact that this section has not been repealed by the legislature, it is obvious that county auditors retain ultimate responsibility for the accuracy of the tax statements that are sent out to the taxpayers.

The County's error was not one of classification, but was the result of the failure to apply the proper statutory rate which amounts to an arithmetic error. As such, this particular set of circumstances does not fall under the scenarios envisioned by the legislature when it enacted Minn. Stat. § 278.01, therefore, Christian does not have an adequate remedy under these facts under this section.

Christian's complaint claims he should be awarded recovery under any of several alternative theories. However,

the resolution of this case is best summarized by the words of the Supreme Court of Minnesota in *Sloan* v. *City of Duluth*:

> If this were a suit between two individuals, based upon the same state of facts, there can be no doubt that an action as for money had and received would lie. The obligation of the county to repay does not depend upon the authority of the county board to collect the money, but arises from the moral obligation resting upon every person, natural or artificial, to make restitution where they have received without consideration the money of another which they have no right to retain.

259 N.W. 393, 395, 194 Minn. 48, 53 (Minn. 1935) (citations omitted).

It is clear that Minnesota law supports an award to a taxpayer of money she made under a mistake of fact. *See e.g.*, *Sloan* v. *City of Duluth*, 259 N.W. 393, 194 Minn. 48 (Minn. 1935); *Cooperative Power Ass'n* v. *Astleford*, 386 N.W.2d 313 (Minn. Ct. App. 1986) ("A tax payment is not considered voluntary when made under a mistake of fact. Such mistake may consist of some official action by the tax collecting officer, *the correctness of which the taxpayer has a right to rely.*") (citing *Wheeler* v. *Board of Commissioners of Hennepin County*, 87 Minn. 243, 91 N.W. 890 (Minn. 1902)) (emphasis added).

Christian made his payment after he received a statement from the County stating an amount due. He relied, justifiably so, on the correctness of that statement. However, when he made the payments, Christian was under the mistaken impression that the amount shown was correct. A reasonable person would not have made payments if they were aware that the County was overcharging them. The County has no right to

retain what is not theirs, and therefore, the Court is ordering it to disgorge the overpayments made to it by Christian.

Finally, the Court is ordering that the County treat the parcels as contiguous for the purposes of determining what the appropriate tax for the Pay '93 year ought to have been. As such, the Court finds that Plaintiff overpaid, and should be reimbursed for, his Pay '93 property tax in the amount of $1,988.04. In addition, Plaintiff is entitled to prejudgment interest pursuant to Minnesota Statutes Section 549.09[6] in the amount of $516.11, for a total judgment of $2,504.15.

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[6] In a document submitted to this Court containing a calculation of his damages, Christian argued that he was entitled to an awards of prejudgment interest based upon the interest rate contained in Minn. Stat. § 279.03, subd. 1(a). An award on this basis would be inappropriate. In *Arcadia Dev. Corp.* v. *County of Hennepin*, 528 N.W.2d 857 (Minn. 1995), the Supreme Court considered whether an award of prejudgment interest under § 279.03, subd. 1(a) would be proper in the context of a refund pursuant to a § 278 petition. The court determined that the legislature intended § 279.03 subd. 1(a) to relate only to interest on delinquent taxes, not awards of prejudgment interest. Accordingly, the court directed that prejudgment interested be awarded pursuant to § 279.03, subd. 1, which directed the court to § 549.09. While that decision was made in a slightly different context, the Supreme Court's reasoning is equally as valid in this case.

APPENDIX D

STATE OF MINNESOTA, COUNTY OF HENNEPIN
DISTRICT COURT
FOURTH JUDICIAL DISTRICT

Programmed Land Inc., et al., and
Susan M. Schuler, et al., *Plaintiffs*

v.

Patrick O. Connor, in his capacity as Treasurer and Auditor of Hennepin County; Hennepin County Board of Commissioners; and Hennepin County, Minnesota, *Defendants*.

No. 98-10713, and 98-10715

The above-entitled matter came before the Honorable Gary Larson, Judge of Hennepin County District Court, on February 2, 1999, on Plaintiffs' Motion for Class Certification and Defendants' Motion for Summary Judgment.

ALAN KILDOW, Esq., ROBERT HILL, Esq., and KEITH SIMMONS, Esq. appeared for and on behalf of Plaintiffs.

MARK MAHER, Esq., and ROBERT RUDY, Esq., appeared for and on behalf of Defendants.

Based upon all files, records and proceedings herein, together with the arguments of counsel,

IT IS HEREBY ORDERED:

1. That Defendants Motion for Summary Judgment on the grounds of Res Judicata is hereby **DENIED.**

2. That Defendants Motion for Summary Judgment on Count I, Overpayment pursuant to Minn. Stat. § 276.19 is hereby **DENIED.**

3. That Defendants Motion for Summary Judgment on Count II, Recovery of money had an received is hereby **DENIED.**

4. That Defendants Motion for Summary Judgment on Count III, Recovery of money paid by mistake is hereby **DENIED.**

5. That Defendants Motion for Summary Judgment on Count IV, Breach of Contract is hereby **DENIED.**

6. That Defendants Motion for Summary Judgment on Count V, Unjust Enrichment is hereby **DENIED.**

7. That Defendants Motion for Summary Judgment on Count VI, Recovery of excess taxes collected pursuant to Minn. Stat. § 275.26 is hereby **DENIED**.

8. That Defendants Motion for Summary Judgment on Count VII, Abatement of property tax pursuant to Minn. Stat. § 375.192 is hereby **DENIED.**

9. That Defendants Motion for Summary Judgment on Count VIII, Violation of the Equal Protection Clause is hereby **DENIED.**

10. That Defendants Motion for Summary Judgment on Count X, Violation of the Due Process Clause is hereby **DENIED.**

11. That Defendants Motion for Summary Judgment on Count X, Violation of the Minnesota Constitution is hereby **DENIED.**

12. That Plaintiffs' Motion to Certify the Class is **GRANTED.**

13. That the definition of the Class in this case will await further order of the Court.

BY THE COURT:

Dated: April 19, 1999

GARY LARSON /S/
Judge of District Court
C-1651 Government Center
Minneapolis, MN 55487
(612) 348-6102

FACTS

Each of the named Plaintiffs asserts ownership of commercial or industrial property in Hennepin County from May 15, 1987 to July 14, 1998 (the date of the complaint). They claim the properties qualified for the "low or preferred"[1] tax rate classification, under Minn. Stat. § 273.13, Subd. 24, Class 3(a) (1989), for each assessment year and that they are entitled to a money judgment for a refund of taxes based upon having received the "regular" classification rate under the statute.

In 1989,[2] Minn. Stat. § 273.13, Subd. 24 was revised, so that the first $100,000 in market value for every commercial, industrial, and utility property n the county is to be taxed at:

> [A] class rate of 3.3% of the first $100,000 of market value for taxes payable in 1990, 3.2% for taxes payable in 1991, 3.1% for taxes payable in 1992, and 3% for taxes payable in 1993 and thereafter, and 5.06 of the market value over $100,000. In the case of state-assessed commercial, industrial and utility property owned by one person or

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[1] The Parties use the terms "low" and "preferred" to describe the same tax rate at issue in this case. For sake of clarity we will refer to this tax rate as the "low" tax rate.

[2] The statute previously stated as follows:

> Commercial and industrial property in class 3(a). It is asserted at 28 percent of the first $60,000 or market value and 43 percent for the market value over $60,000. In the case of state assessed commercial or industrial property owned by one person or entity, only one parcel may qualify for the 28 percent assessment. In the case of commercial or industrial property owned by one person or entity, only one parcel in each county may qualify for the 28 percent assessment.

entity, only one parcel has a reduced class rate on the first $100,000 of market value. In the case of other commercial, industrial, and utility property owned by one person or entity, only one parcel in each county has a reduced class rate on the first $100,000 of market value.

The Complaint contains ten counts[3]

1. Overpayment pursuant to Minn. Stat. § 276.19.
2. Recovery of money paid by mistake.
3. Recovery of money had and received.
4. Breach of Contract.
5. Unjust enrichment.
6. Recovery of excess taxes collected pursuant to Minn. Stat. § 275.26.
7. Abatement of property tax pursuant to Minn. Stat. § 375.192.
8. Violation of the Equal Protection Clause.
9. Violation of Due Process Clause.
10. Violation of the Minnesota Constitution.

On September 23, 1998, Defendants' moved this Court to transfer these cases to the Minnesota Tax Court, which was denied by this Court in an Order dated December 30, 1998. Before this Court issued its Order, the Defendants, on November 5, 1998, moved the Minnesota Supreme court for an Order transferring to the Minnesota Tax Court, all cases that involve the property tax controversy of whether particular parcels of property are entitled to receive the "low rate" of Class 3(a) property or the "general rate" of Class 3(a) property, Plaintiffs' opposed the Motion but requested an Order transferring all such cases to a single District Court Judge. On

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[3] These Counts include Counts from the Amended Complaint filed on July 27, 1998.

December 1, 1998, the Supreme Court issued its Order denying both requests. Defendants now move this Court for Summary Judgment, while Plaintiffs move this Court for class certifications.

ARGUMENT

I. Standard for Summary Judgment

Under the Minnesota Rules of Civil Procedure, a grant of summary judgment is proper when:

> [T]he pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no issue as to any material fact and that either party is entitled to judgment as a matter of law.

Minn. R. Civ. P. 56.03. "Summary judgment is not a substitute for trial and may be granted only if, based on the entire record, no issue of material fact exists, and the moving party is entitled to judgment as a matter of law." *Bixler* v. *J.C. Penney Co., Inc.*, 376 N.W.2d 209,215 (Minn. 1985). A material issue of fact is one which would affect the outcome of the case. *Pischke* v. *Kellen*, 384 N.W.2d 201, 205 (Minn. Ct. App. 1986) (citing *Rathbun* v. *W.T. Grant Co.*, 219 N.W.2d 641, 646 (Minn 1974).

Summary judgment has been characterized as a "blunt instrument" which "should be employed only where it is perfectly clear that no issue of fact is involved in the cause of action." *Donnay* v. *Boulware*, 144 N.W.2d 711, 716 (Minn. 1966). The Minnesota Supreme Court has stated that the "burden is on the moving party to show the absence of any material fact." *Bixler*, 376 N.W.2d at 215 (citing *Barilla* v. *Clapshaw*), 237 N.W.2d 830, 831 (Minn. 1976)); *See Thiele* v. *Stick*, 425 N.W.2d 580, 583 (Minn. 1988) (the burden is on movant to establish that no genuine issue of materia fact exists).

When determining whether the moving party has sustained its burden, the court must view the evidence in a manner most favorable to the nonmoving party. *See Sauter* v. *Sauter*, 70 N.W.2d 351, 353 (Minn. 1955); *Ritter* v. *M.A. Mortenson Co.*, 352 N.W.2d 110, 112 (Minn. Ct. App. 1984) (citing *Greaton* v. *Enrich*), 185 N.W.2d 876, 878 (Minn. 1971)). All doubts and factual inferences must be resolved against the moving party and in favor of the nonmoving party. *Nord* v. *Herreid*, 305 N.W.2d 337, 339 (Minn. 1981); *See Dempsey* v. *Jaroscak*, 188 N.W.2d 779, 781-82 (Minn. 1971).

It is only when the movant has satisfied its burden must the nonmoving party then show the existence of a genuine issue of material fact. *Bixler*, 376 N.W.3d at 215 (citing *Continental Sales and Equipment Co.* v. *Town of Stuntz*, 257 N.W.2d 546, 550 (Minn. 1977). If the nonmoving party fails to present specific facts indicating that a genuine issue of material fact exists, summary judgment is proper. *Hunt* v. *IBM Mid Am. Employees Fed. Credit Union*, 384 N.W.2d, 853, 855 (Minn. 1986).

In order to successfully oppose a motion for summary judgment, the nonmoving party cannot rely upon mere averments or denials set forth in its pleadings, but must present specific facts showing that there is a genuine issue for trial. Minn. R. Civ. P. 56:05; *See Hunt*, 384 N.W.2d at 855 (the nonmoving party cannot rely on mere general statements of fact.). Moreover, "[t]he court is not required to save the nonmoving party by drawing unreasonable inferences." *City of Savage* v. *Varey*, 358 N.W.2d 102, 105 (Minn. Ct. App. 1984).

II. Defendants' Motion for Summary Judgment

A. Res Judicata

Defendants move this Court to bar Plaintiffs' claims under the doctrine of Res Judicata.[4] Minn. R. Civ. P. 41.01(a) provides as follows:

> . . . [A]n action may be dismissed by the plaintiff without order of the court (1) by filing a notice of dismissal at any time before service by the adverse party of an answer or of a motion for summary judgment, whichever first occurs, or (2) by filing a stipulation of dismissal signed by all parties who have appeared in the action. Unless otherwise stated in the notice of dismissal or stipulation, the dismissal is without prejudice, except that a notice of dismissal operates as an adjudication upon the merits when filed by a plaintiff who has once dismissed in any court of the United States or of any state an action based on or including the same claim.

Defendants argue that the plaintiffs in this action are the same plaintiffs who have dismissed two previous actions against the Defendants and therefore this new action should be barred by the doctrine of Res Judicata. Specifically, the Defendants claim that on February 25, 1997, these plaintiffs voluntarily dismissed Programmed Land II which was filed in the Court of Appeals as a Petition for a Writ of Certiorari. On January 8, 1999, These plaintiffs filed a Notice of Dismissal on Programmed Land I that was pending before the Minnesota Tax

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[4] Defendants also moved for barring Plaintiffs claims under the doctrine of Prior Action Pending. Defendants acknowledge that this motion was only if the Plaintiffs' had failed to dismiss their Programmed Lane I case. Plaintiffs on January 7, 1999, Dismissed the Programmed Land I case and therefore this issue is moot.

Court. Defendants argue that under Minn. R. Civ. P. 41.01(a), these two dismissals bar the Plaintiffs current claims.

The Court finds that the doctrine of Res Judicata is not applicable to this case. One of the "actions" Defendants argue implicates Minn. R. Civ. P. 41.01(a) is the dismissal of a Petition for Writ of Certiorari before the Minnesota Court of Appeals. Minn. R. Civ. P. 81.01(a) expressly excludes Petitions for Writ of Certiorari from the Rules of Civil Procedure. Therefore, Defendants motion to bar Plaintiffs' claims under the doctrine of Res Judicata is hereby denied.

B. Classification Rate

Defendants move this Court for summary judgment on all 10 counts in Plaintiffs' complaint. For purposes of this motion the Court assumes Plaintiffs' Complaint is accurate and that all of Plaintiffs' properties qualify for the low tax rate classification for taxes payable 1987 through 1997. We also assume that the properties received the regular tax rate classification for taxes payable in 1987 through 1997. The essential issue this Court must decide is who committed the error that led to Plaintiffs paying excess taxes and what recovery, if any, is possible.

Defendants' fundamental argument is that the issue before the Court is the classification of Plaintiffs' property and that the determination of a classification rate is an assessment function handled by the county assessor. If this Court were to find that the classification of Plaintiffs' property was an assessment function, then summary judgment would be granted because Plaintiffs' exclusive remedy for overpayment of taxes under Minnesota law is Minn. Stat. § 278 which has a one year statute of limitations. The statute of limitations has run out on Plaintiffs' claims over the last ten years. The 10 counts in

Plaintiffs complaint all address alternative forms of recovery, which would be precluded under Chapter 278.

Plaintiffs' fundamental argument against summary judgment is based on two grounds. First, Plaintiffs' claim the issue in this case is not the county assessor's classification of Plaintiffs' property. Plaintiffs argue that the error was committed by the auditor, not the assessor, when the auditor did not "fix" the "appropriate rates" in determining Plaintiffs property taxes during the collection phase of the overall process. *See* Minn. Stat. § 275.08, subd. 1(a) (1993). Secondly, even if this Court were to find that this case involves an assessment function, Plaintiffs argue that the county auditor failed, as Minnesota law requires, to audit the information received from the assessor to ensure its accuracy, prior to assessing the property taxes due from the Plaintiffs. In either case, the Plaintiffs claim that these errors do not fall within the classification function that implicates Chapter 278. If this Court agrees with Plaintiffs, then Chapter 278 is not the exclusive remedy for overpayment of taxes and the Plaintiffs are possibly able to recover under any one of their 10 theories of recovery.

Defendants summary judgment motion is based on the grounds that the error in this case was committed during the tax assessment phase by the county assessor. Essentially, the assessor places a value and classification on a piece of commercial property and an owner may, within one year, file a Chapter 278 petition to question the value or classification placed on the property by the assessor. Defendants argue that the error in this case occurred when the county assessor failed to classify the properties into the "low rate" of Class3(a) property and instead placed it into the "general rate" of Class 3(a) property. Defendants claim, based on Chapter 278 as the

exclusive remedy, that the Plaintiffs had one year to contest the classification and that they failed to timely and properly contest it.

This Court finds numerous problems with Defendants argument in this motion. The legislature did not describe or characterize the class rate prescribed by Minn. Stat. § 273.13 subd. 24 as "low" or "regular" classifications." Rather, it is Defendants who have created this new "classification" in contradiction of the principle that only the legislature has the authority to create classifications. *In re Taxes on property of Cold Spring Granite Co.*, 136 N.W.2d 782, 787 (Minn. 1965). Essentially the Defendants have applied a classification rate that does not exist in the statute to the financial detriment of Plaintiffs,[5] failed to notify the Plaintiffs of this classification, improperly taxed Plaintiffs on this new classification, and now claim that the only recovery available to Plaintiffs was to have contested their classification within one year.

The parties' contention regarding the classification issue raises a strictly legal question as to the statutory duties of the Auditor and Assessor. Under Minn. Stat. § 275.28, subd. 1, the Auditor is required to prepare the tax lists to "correspond with the assessment books in reference to ownership and description of property." The Auditor has a statutory obligation to compile an accurate tax roll by January 2nd of every year pursuant to Minn. Stat. § 273.01. *See* Minn. Stat. § 273.01 ("All real property subject to taxation shall be listed...with reference to their value on January 2 preceding the assessment"). From this list, the assessor determines the value and classification of a taxpayer's property. Once property is valued and classified as

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[5] In 1982 regular commercial low rate commercial were classified differently under state law, when the Statute was re-codified in 1985, these separate classifications were eliminated by the State.

Class 3(a) property, the Auditor then must refer to the ownership list to determine whether a taxpayer owns more than one to determine the application of the reduced rate pursuant to Minn. Stat. § 273.13, subd. 24 Class 3(a).

No further ownership information is necessary because the tax rolls are prima facie evidence of ownership that the auditor must rely upon in applying the mandated rate pursuant to § 273.13, subd. 24, Class 3(a). *See* Minn. Stat. § 275.28, subd. I (noting that in calculating tax rates the auditor is required to calculate rates and make lists "to correspond with the assessment book in reference to ownership"); *Washington County* v. *Jefferson's Estate*, 28 N.W. 256, 258 (Minn. 1886) (noting auditor's certification of tax lists is prima facie evidence of the tax). Therefore, Defendants failure to properly prepare the tax rolls or to maintain an accurate ownership record as of January 2nd affects an auditor's ability to apply correctly the rates specified in Minn. Stat. § 273.13. Clearly, Defendants' ownership problems are not based upon classification but rather upon the accuracy of the ownership lists prepared before the assessment phase is even started.

The requirement of the Auditor to list the names of the known owners is supported by *B.W. & Leo Harris Co.* v. *Dakota County*, 74 N.W.2d 111, 115 n.3 (citing Op. Att'y Gen. 2 IF (Aug. 6, 1943)). In *B.W. & Leo Harris* the court reviewed the roles of assessor and auditor and determined that the listing and assessment of property are two separate and distinct acts. An auditor must create a complete list of the property that is subject to taxation that includes listing the names of the owners. *Id.* at 115. Assessment, however, "is the process of going forward from the time the property is listed." *Id.* at 114. This process entails:

> viewing the property, determining its true vale, entering the value on the book opposite the description, entering the assessment in the assessment book and on the tabular statements for each book in correct balance.

Id. The court's analysis reveals that the creation of the property and ownership list is the obligation of the Auditor, not the Assessor, as Defendants content.

The list the Auditor is statutorily required to prepare, Minn. Stat. § 275.08, subd. 1(a), explicitly imposes upon the Auditor the duty to "compute the gross tax capacity for each parcel according to the class rates specified in Section 273.13." Although the statutory language clearly requires the Auditor to fulfill this function, Defendants argue this is part of the assessment process. Defendants cite *Summit House*, 253 N.W.2d 127 and suggest that the case supports their position that different class rates created different classifications and that assignment of a class rate is an assessment function."

In *Summit House*, however, the sole issue was the year that a new classification came into effect. The property was classified under Minn. Stat. § 273.13, subd. 19. The taxpayer claimed the property should have been classified under a new provision, Minn. Stat. § 273.13, subd. 20, affected taxes payable in the following year, thereby preventing the taxpayer from receiving the benefit of the new statute until it was in effect.

In making this determination, the court specifically analyzed the rolls of an assessor and an auditor, and found that the auditor has a non-delegable duty under Minn. Stat. § 275.08 subd. 1(a) to "fix" the "appropriate rate" when computing the net tax capacity for a given parcel. The Supreme Court stated:

> This court has historically drawn a sharp distinction between the function of the assessor and that of the auditor. The assessor is entrusted with the responsibility of assessing the property for the purpose of determining its value for taxation, (citation omitted). In contrast, the auditor has the duty of calculating and assessing the taxes once the taxable value has been determined by the assessor. (citations omitted).

Summit House, 253 N.W.2d at 129.

Thus, under *Summit House* an assessor is responsible for ascertaining the taxable value of a parcel of property and for determining the proper classification based upon the property' use. *See Barron* v. *Hennepin County*, 488 N.W.2d at 293 (noting this process entails a fact-finding responsibility to examine the "specific nature of the property and the use or multiple uses to which the property has been put."). An auditor, on the other hand, is responsible for computing the tax capacity for each parcel according to the rates found in § 273.13, which comports with the duties outlined in Minn. Stat. § 275.08 (outlining the duties of an auditor).

In compliance with the statutory duty, the Hennepin County Assessor correctly classified Plaintiffs' property as Class 3(a) commercial and industrial property based upon the use of the property. Plaintiffs do not challenge the 3(a) classification. Rather, Plaintiffs' claims stem solely from the fact that the Auditor failed to fix the appropriate rate when "calculating and assessing the taxes once the taxable value has been determined b the assessor." *Summit House*, 253 N.W.2d at 129. This Court finds that Defendants' contention that the assignment of a class rate is an assessment function and that this case involves a classification issue, is, therefore, entirely misplaced.

Defendants seem to suggest that because the Hennepin County Assessor's Office provides the Auditor with ownership information, that the determination of property ownership is a function which can be delegated. In Minnesota, however, an officer who has been assigned a duty by the legislature may only re-delegate that authority to a third party if "adequate legislative or administrative safeguards exist to protect against the injustice that results from uncontrolled discretionary power." *Hubbard Broadcasting, Inc.* v. *Metropolitan Sports Comm'n*, 381 N.W.2d 842, 847 (Minn. 1986). An officer or agency may employ staff or committees to assist in the exercise of the statutorily imposed obligation, but they cannot delegate the power to make final decisions. *Minneapolis Gas-Light co.* v. *City of Minneapolis*, 30 N.W. 450, 452 (Minn. 1886); *Hueman* v. *Ind. School Dist. No. 77*, 67 N.W.2d 38, 41 (Minn. 1954). In other words, the officer must exercise his own judgment and discretion and cannot merely "rubber stamp" the decisions of the staff or others the agency hires to provide assistance. *See City of Moorhead* v. *Minnesota Public Utilities Comm'n*, 343 N.W.2d 843, 846 (Minn. 1984).

As Defendants concede, for the purposes of this summary judgment motion it must be assumed that Plaintiffs were taxed at an erroneous class rate. The obligation to "fix" the correct class rate has been imposed upon the auditor under § 275.08, subd. 1(a). Although as a matter of fact the Auditor may have enlisted the assistance of the Assessor's office to determine ownership, the Auditor may not delegate the ultimate statutory responsibility for applying the correct rates, and may not simply "rubber stamp" the Assessor's work. *See City of Moorhead*, 343 N.W.2d at 846. If the Auditor failed to check and correct the Assessor's work, there was an impermissible delegation of a statutorily imposed obligation.

This Court finds that this case does not involve the assessment error by the county assessor, but rather the county auditor committed the error when the auditor did not "fix" the "appropriate rates" in determining Plaintiff's property taxes during the collection phase of the overall process. *See* Minn. Stat. § 275.08, subd. 1(a) (1993). This Court finds that Chapter 278 is not the sole remedy available to Plaintiffs' and, therefore, Defendants motion for summary judgment based on Chapter 278 being the sole remedy available to Plaintiffs is hereby denied.

III. Remed[ie]s Available to Plaintiff

Having determined that Chapter 278 is not the sole remedy available to the Plaintiffs in this case the Court now addresses the issue of Plaintiffs theory of recovery for damages in this case.

Plaintiffs' argue that an overpayment of property taxes took place in this case and cite Minn. Stat. § 276.19 which states:

> If an overpayment of property taxes arises on a parcel of land for any reason, the responsible county official shall promptly notify the payer by regular mail that the overpayment has occurred. The notice must state the amount of overpayment and identify the parcel on which the overpayment occurred. The notice must also instruct the payer how to claim the overpayment and advise that the overpayment is subject to forfeiture under this section. If the name or address of the payer is not known, the notice of unclaimed overpayment must be mailed to the taxpayer of record in the office of the county Auditor. (emphasis added).

The statute also requires that if a person entitled to an overpayment fails to claim the overpayment, the county auditor

"shall cause notice to be published at least once in an English language newspaper of general circulation in the county. *Id.*

It is well-settled law in Minnesota that a statute is to be enforced literally if its language embodies a definite meaning which involves no absurdity or contradiction. *Bard* v. *City of Minneapolis*, 99 N.W.2d 468, 471 (Minn. 1959).

The Court finds that Minn. Stat. § 276.19 provides Plaintiffs with a remedy to recover the overpayment indisputably caused by Defendants. First, Minn. Stat. § 276.19 imposes explicit, mandatory obligations upon the Defendants to notify taxpayers of all overpayments, an obligation Defendants undisputedly failed to satisfy and refused to undertake. Second, the legislature's use of the term "overpayment" includes Plaintiffs' payment as a result of Defendants' application of an inappropriate class rate. Third, Minn. Stat. § 276.19 by its terms applies to the overpayment of property taxes made "for any reason." The legislature's use of the facially unrestricted phase "for any reason" mandates application of Minn. Stat. § 276.19 in this case.

This Court also finds that even if Minn. Stat. 2176.19 did not apply in this case, then Plaintiffs would still be entitled to recovery under their constitutional law claims.

IV. CLASS CERTIFICATION

Plaintiffs move this Court to certify this case as a class action. Plaintiffs argue that a class action is appropriate in this case because the number of parties affected by this action is so large that joinder is impractical, there are common issues of law and fact in dispute, the claims of the representatives are typical of the claims of the class, and the representatives will fairly and adequately protect the interests of the class.

The party promoting a class action bears the burden of establishing that all of the class action requirements are satisfied. *Keating* v. *Phillip Morris, Inc.*, 417 N.W.2d 132, 136 (Minn. Ct. App. 1987). This Court may only certify a class action if, "after a rigorous analysis, "all of the prerequisites have been satisfied. *Jensen* v. *Eveleth Taconite Co.*, 139 F.R.D. 657, 659 (d. Minn. 1991) (quoting *General Tel. Co. of the Southwest* v. *Falcon*, 457 U.S. 147, 161 (1982)).

Plaintiffs' motion to certify a class pursuant to Minn. R. Civ. P. 23.03 involves a two step analysis under Rules 23.01 and 23.02. Rule 23.01 provides the initial threshold for certification. A plaintiff must establish under this rule that:

a. The class is so numerous that joinder of all members is impracticable;

b. there are questions of law or fact common to the class

c. the claims or defenses of the representative parties are typical of the claims or defenses of the class; and

d. the representative parties will fairly and adequately protect the interest of the class.

Minn. R. Civ. P. 23.01.

In analyzing this motion for class certification, this Court will examine the Rule 23.01 elements one at a time.

A. Impracticability of Joinder

In July 1998, Defendants released a "change list" in which they estimated that a total of 1,019 commercial and industrial property owners failed to receive the appropriate rates. Since that time, Plaintiffs audited the tax lists for a three year period (1994 and 1996) and identified approximately 7,100 claims. As Plaintiffs have only audited the ownership lists for a short

period of time, it is evident that the total number of class participants could be in excess of 10,000 for the entire Class. This Court finds that there are numerous members of this class that would make joinder impracticable. This Court holds that the "numerosity" requirement for certification of a class action is satisfied in this case.

B. Common Questions of Law and Fact

The next issue for this Court to address is whether "there are questions of law and fact common to the class" Minn. R. Civ. P. 23.01(b); *Streich* v. *American Family Mut. Ins. Co.*, 399 N.W.2d 210, 214 (Minn. App. 1987). The threshold for commonality is "not high" and requires "only that the resolution of the common questions affect all or a substantial number of class members." *Id.*

The Plaintiffs in this case are dealing with the same factual and legal issues. Specifically, Defendants have applied a classification rate that does not exist in the statute to the financial detriment of Plaintiffs, Defendants have failed to notify the Plaintiffs of this classification, improperly taxed Plaintiffs on this new classification, and not the Defendants claim that the only recovery available to Plaintiffs was to have contested their classification within one year.

This Court finds that the Plaintiffs have common questions of law and fact concerning the issues in this case. This Court holds that the common question of law and fact requirement for certification of a class action is satisfied in this case.

C. The Typicality Requirement

The "typicality" requirement refers to the potential for rivalry between class members, which may jeopardize the class. *Ario* v. *Metropolitan Airports Comm'n*, 367 N.W.2d 509, 513

(Minn. 1985). The "typicality" requirement differs from the "representativity" requirement; the latter focuses on the ability of class representatives to adequately represent the members of the class, while the former focuses on whether the claims are typical among all class members. *See* I David F. Herr & Roger S. Haydock, *Minnesota Practice*, § 23.6 (1985). "Typicality" is satisfied "when the claims of the named Plaintiffs emanate from the same event or are based on the same legal theory as the claims of the class members." *In re Workers' Compensation*, 130 F.R.D. 99, 105 (D. Minn. 1990).

This Court finds that the "typicality" requirement is met in this case, since the claims of the named Plaintiffs mirror those of the proposed class members." The named Plaintiffs and all proposed class members allege that the use of an incorrect tax rate resulted in their overpayment of property taxes to Defendants. Since the claims are identical, there is no risk of rivalry between class members. This Court holds that the "typicality" requirement for certification of a class action is satisfied in this case.

D. The Representivity Requirement

The "representivity" requirement means that the representative parties' interests must coincide with the interests of other class members and that their counsel will competently and vigorously prosecute the lawsuit. *Streich*, 399 N.W.2d at 215. As Minnesota courts have noted, factors used to determine if representativity is satisfied include:

> (1) whether the representatives' interests are sufficiently identical to those of absent class members so that the representatives will vigorously prosecute the suite on their behalf, (2) whether the attorneys are qualified, experienced, and capable of conducting the litigation; and (3) whether

> the representatives have any interests in conflict with the objective of the class they represent.

Id. (citation omitted).

This Court finds that each factor is met in this case. As discussed previously, the representatives' interests are identical to those of the proposed class in each and every instance. First, it was the Defendants' error that resulted in overpayments by all class members. Second, this Court is satisfied that the class will be capably and vigorously represented by the Plaintiffs. Finally, the class representatives do not have any interests in conflict with the objectives of the class. This Court holds that the "representivity" requirement for certification of a class action is satisfied in this case.

E. Analysis under Minn. R. Civ. P. 23.02

Rule 23.02 provides an additional threshold for class certification, which provide in relevant part:

> An action may be maintained as a class action if the prerequisites of Rule 23.01 are satisfied, and in addition:
>
> (a) the prosecution of separate actions by or against an individual members of the class would cerate a risk of
>
> (1) inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the party opposing the class, or
>
> * * *
>
> (b) the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole; or

(c) the court finds that the question of law or fact common to the members of the class predominate over members any questions affecting only individual members, and that a class action is superior to other available methods for the fair and effective adjudication of the controversy.

Minn. R. Civ. P. 23.02.

In this case, this Court finds that Defendants discrimination in the application of the commercial and industrial property tax on grounds generally applicable to the class requires the present class action so that each and every taxpayer may receive redress in a fair and efficient manner. Adjudication of this suit is, as a practical matter, dispositive of the interest of all other members not parties to the lawsuit and would substantially impair or impede their ability to protect their interests. This Court holds that Plaintiffs have met the elements under Minn. R. Civ. P. 23.01 and 23.02 to properly certify the Plaintiffs in this action as a class. Plaintiffs motion for class certification is hereby granted. The definition of the Class in this case will await further order of the Court.

CONCLUSION

For the foregoing reasons, Defendants motion for summary judgment is hereby **DENIED.** Plaintiffs motion to certify the class is **GRANTED.** The definition of the Class in this case will await further order of the Court.

APPENDIX E

STATE OF MINNESOTA ☒ Supreme Court

☐ Court of Appeals

CX-99-777 Cv-99-1210
Appellate Court Case Number
9810713 C4979320
Trial Court Case Number

Programmed Land, Inc., et al.,

Respondents,

vs.

Patrick O'Connor, in his capacity as Treasurer and Auditor for Hennepin County, et al., petitioners,

Appellants,

and

Harold Christian, individually, and on behalf of all others similarly situated,

Respondent,

vs.

Thomas Novak, in his capacity as Treasurer and Auditor for Dakota County, et al.,

Appellants.

Pursuant to an order of Court heretofore duly made and entered in this cause it is determined and adjudged that the order and judgment of the Court below, herein appealed from, to wit, of the District Court within and for the County of

Hennepin/Dakota be and the same hereby is reversed in part, affirmed in part in accordance with opinion and that judgment be entered accordingly. A certified copy of the entry of judgment and the Court's decision is herein transmitted and made part of the remittitur.

Dated and signed: FOR THE COURT October 29, 2001

Dated

Attest: Frederick K. Grittner

Clerk of the Appellate Courts

By: _____

Assistant Clerk

Supreme Court, U.S.
FILED
FEB 15 2002
CLERK

No. 01-1061

In the
Supreme Court of the United States

PROGRAMMED LAND, INC., ET AL.,
Petitioners,

v.

PATRICK O'CONNOR, IN HIS CAPACITY AS TREASURER AND AUDITOR FOR HENNEPIN COUNTY, MINNESOTA, ET AL.,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE MINNESOTA SUPREME COURT

HENNEPIN COUNTY RESPONDENTS' BRIEF IN OPPOSITION

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22pp

QUESTION PRESENTED

Until 1998, each taxpayer who owned commercial or industrial property was entitled to receive a lower class rate on one property per county. Hennepin County identified and treated these properties as a separate class from other commercial or industrial properties. In Hennepin County, taxpayers received three notices which included, *inter alia*, the assessor's determination of class or treatment. Taxpayers receiving the lower class rate had the words "preferred" or "low-rate" after the word "commercial" or "industrial" on these notices. Taxpayers receiving the regular higher commercial rate only had the word "commercial" or "industrial" on the notices. Statutorily created civil actions called Tax Petitions had to be filed no later than March 31st of the year in which the taxes were payable. Applications for administrative review had to be made by December 31st, or nine months after the filing deadline for Tax Petitions. The first notice was sent to taxpayers approximately ten months prior to the filing deadline for Tax Petitions, the second notice was sent approximately four months prior to the filing deadline for Tax Petitions and the third notice was sent no less than thirteen days prior to the filing deadline for Tax Petitions. In this context the questions are:

1. Whether the Due Process Clause is violated by a property tax system in which the taxpayer received three separate notices containing descriptive words which unequivocally identified the class or treatment the property received prior to the running of the statute of limitations for filing a statutorily created civil lawsuit or for applying for an administrative review.

2. Whether the Equal Protection Clause is violated where errors in the classification or treatment of property by assessors were not intentional, arbitrary or systematic.

3. Whether an equal protection claim was subject to the same statute of limitations imposed on all other property tax claims.

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STATEMENT

This case raises due process and equal protection claims with regard to the statutory appeal procedures of the property tax system in the State of Minnesota. In 1997, the Minnesota State Legislature amended the classification statute so that there was only one class rate for commercial and industrial property, making this case moot for taxes after 1997. The Hennepin County petitioners filed this case in 1998 seeking recovery of allegedly overpaid real property taxes between 1987 and 1997. Hennepin County Respondents made administrative corrections for taxes payable in 1997 and granted administrative abatements for taxes payable in 1996. *See* Minn. Stat. §§ 273.01 and 375.192, subd. 2. However, Respondent refused to consider corrections for taxes payable in 1995 or prior years because those taxes were beyond the statutorily prescribed periods for filing claims. Petitioners' Brief app. at 5a. The Minnesota Supreme Court upheld Hennepin County's decision, concluding that the statutes of limitations had expired and the notices given did not violate the Due Process Clause. The Court also found no violation of the Equal Protection Clause because Petitioners had not shown that the treatment accorded taxpayers who received the lower class rate compared to those who did not, was the result of intentional or arbitrary or systematic discrimination.

1. The Commercial or Industrial Property Tax Classes. Each taxpayer who owned commercial or industrial property was entitled to receive a lower class rate on one property per county. *See* Minn. Stat. § 273.13, subd. 24 (1996). In Hennepin County, taxpayers receiving the lower class rate had the words "preferred" or "low-rate" after the word "commercial" or "industrial" on the notices they received. Taxpayers receiving the regular higher commercial rate only had the word "commercial" or "industrial" on the notices. Hennepin County treated property receiving the

lower class rate as a separate class from the regular commercial or industrial class. For purposes of this brief, Hennepin County will identify the commercial or industrial property receiving the lower class rate as "commercial low" class and will identify commercial or industrial property receiving the regular class rate as "commercial regular" class. In its decision, the Minnesota Supreme Court did not rule whether commercial low class was a separate classification from commercial regular class or whether it was a separate treatment. Depending on the particular year, the commercial low class actually had a "tiered" rate with the first $100,000 of value multiplied by 3.0% to 3.3% and the remainder of value multiplied by 4.6% to 5.25%. The commercial regular class had the higher "tiered" percentage of the commercial low class for the particular year as a single flat rate.

2. How Commercial or Industrial Property Tax was Computed.

a. The Assessment Process. The first step in computing property tax was for the assessor to determine the Estimated Market Value (EMV) and the class of the property for the assessment date in question. The assessment date was January 2nd of the year preceding the year in which the taxes were payable. In Hennepin County for the period in question, the assessor had to determine whether the property was entitled to commercial low class or the commercial regular class. Once that decision was made, the assessor multiplied the statutorily determined class rate by the EMV to arrive at the "Net Tax Capacity" of the property. For example, using the class rate identified in Petitioners' Brief app. at 3a for taxes payable in 1993, the first $100,000 of EMV would be multiplied by 3% and any value above that would be multiplied by 5.06%. For a property with an EMV of $200,000, the Net Tax Capacity for commercial low class would be $100,000 x .03 = $3,000 plus $100,000 x .0506 =

$5,060 or $8,060. For a $200,000 property the Net Tax Capacity for commercial regular class would be $200,000 x .0506 = $10,120. The Net Tax Capacity for each property was reported by the assessor to the auditor in June of the assessment year. *See* Minn. Stat. § 274.04. The Assessment process produced the property's EMV, Class, Class rate and Net Tax Capacity.

b. The Levy Process. The next step in computing the tax was for local taxing districts to certify their proposed budgets to the auditor. This was done by September of the assessment year. *See* Minn. Stat. § 275.065, subd. 1. Final budgets and the levy were certified by the local taxing districts to the auditor by December of the assessment year. *See* Minn. Stat. § 275.07. The auditor then divided the total levy by the sum of all Net Tax Capacities for all property in the taxing district to arrive at the Tax Capacity Rate or Extension Rate. *See* Minn. Stat. § 275.08, subd. 1b. As an example, in Petitioners' Brief app. at 10a, n. 8, the Minnesota Supreme Court used a final levy of $1,000,000 and a total of the Net Tax Capacities of $2,000,000 for an Extension Rate of .5. ($1,000,000 ÷ $2,000,000 = .5) The Levy Process produced the Tax Capacity Rate or Extension Rate. This explanation is simplified because it does not take into account state paid aids, fiscal disparities, market rate taxes and the fact that each parcel has multiple taxing districts.

c. The Collection Process. The last step in computing the property tax is for the Extension Rate to be multiplied by the property's Net Tax Capacity to arrive at the tax. In the case of the two commercial properties with an EMV of $200,000 where the Extension Rate is .5, the tax for the property which is entitled to the commercial low class treatment, would be $4,030. This was calculated by taking the Net Tax Capacity of the property and multiplying it by the Extension Rate. ($8,060 x .5 = $4,030) For the property which receives the commercial regular class treatment, the tax would be $5,060. This was calculated by taking the Net Tax

Capacity of the property and multiplying it by the Extension Rate. ($10,120 x .5 = $5,060) Tax Statements were mailed to taxpayers during this process and taxpayers paid the tax. The Collection Process produced the tax amount due for each property.

3. The Three Notices Received by Taxpayers. During the assessment, levy and collection process, taxpayers received three notices. These notices were required by statute to be issued at various times in the process to notify taxpayers of information that was previously available and which became available at the time of their issuance. It is undisputed that while none of the notices for any of the classes of property contained the numerical class rate of the property, all of the notices contained words describing the class or treatment which the property received. In the case of commercial or industrial property, if the assessor determined that the property was entitled to commercial low class, the words "low-rate" or "preferred" would appear on the notices after the words "commercial" or "industrial." If the assessor determined that the property received commercial regular class, only the words "commercial" or "industrial" would appear on the notices.

a. Value Notice. These notices were sent to taxpayers in approximately February of the assessment year which was the year before the taxes were payable. They were the first notices sent and included the EMV, classification or treatment and the dates of the local board of review, which was an administrative appeal process. *See* Minn. Stat. § 273.01. It is undisputed that Hennepin County did not include the numerical class rate on the notices but did identify, by descriptive words, which class or treatment was assigned.

b. Truth in Taxation Notice. These notices were sent to taxpayers between November 10th and 24th of the assessment year. They repeated the EMV and classification or treatment of the property. The notice also included the amount of tax proposed as a result of the proposed budgets

submitted, and a notification of meeting dates of local taxing districts where budgets would be discussed and finalized. *See* Minn. Stat. § 275.065. The same words were used to describe the classification or treatment of property as in the Value Notice.

c. Property Tax Statements. These notices were the last of the three notices that taxpayers received. It is undisputed that in Hennepin County, these notices were sent out before the deadline for filing Tax Petitions for the years in question. In an affidavit that is part of the record in the Minnesota Supreme Court, Marie Kunze, Manager of the Property Tax Division of the Hennepin County Taxpayer Services Department, indicated that Property Tax Statements for commercial or industrial properties were sent to taxpayers between seventy-three and thirteen days before the deadline for filing Tax Petitions. The notices repeated the EMV and classification or treatment of the property using the same words as the previous notices. To this was added the actual property tax amount and the dates on which the taxes were due. *See* Minn. Stat. § 276.04, subd. 3.

4. The Various Appeals Processes. The Minnesota property tax system provided numerous ways to challenge the class or treatment assigned by the assessor. After receiving the Value Notice in approximately February of the assessment year, taxpayers were free to seek adjustments directly from assessors. *See* Minn. Stat. § 273.061, subd. 9. Taxpayers were also free to seek adjustments from the local boards of review and the county board of equalization which met after the Value Notices were received. *See* Minn. Stat. § 274.01, subd. 1. After receiving the Truth in Taxation Notice in November of the assessment year and the Property Tax Statement in March of the payable year, taxpayers could challenge the class or treatment by filing a Tax Petition by March 31st of the payable year. *See* Minn. Stat. ch. 278. Taxpayers were also free to challenge the class or treatment by seeking an abatement from the county by filing an

application by December 31st of the payable year. *See* Minn. Stat. § 375.192. Additionally, the commissioner of revenue had the power of abatement of property taxes in certain circumstances. *See* Minn. Stat. § 270.07, subd. 1. The Minnesota property tax system has five separate ways to challenge the assessment of real property. All of these methods of challenging the assessment are after receiving notice of the EMV and classification or treatment of the property.

5. The Decisions Below. In the trial court, the Hennepin County Respondents moved for summary judgment on a number of grounds. The District Court denied the motion on all grounds. The only grounds relevant to this appeal relate to subject matter jurisdiction. In this context, the District Court ruled against Hennepin County Respondents on all issues but only gave as its rationale that Minn. Stat. § 276.19 provided an alternative statutory remedy for which the statute of limitations had not run. Petitioners' Brief app. D. In its decision, the Minnesota Court of Appeals disagreed with the rationale of the Hennepin County District Court, ruling that Minn. Stat. § 276.19 was not applicable but that equitable or common law remedies were available. The Court of Appeals also ruled that there was no violation of due process or equal protection. Petitioners' Brief app. B. The Minnesota Supreme Court agreed with the Court of Appeals that Minn. Stat. § 276.19 was not available and there was no violation of due process or equal protection, but it reversed the Court of Appeals on the availability of equitable or common law remedies. The Minnesota Supreme Court ruled that where statutorily created remedies were available, equitable and common law remedies could not be used to recover property tax overpayments. Petitioners' Brief app. A. The dissent disagreed on this issue and indicated that equitable and common law remedies should be able to be used to recover a property tax overpayment in this context. The dissent did not disagree with the majority that there was

no violation of due process or equal protection. The only issues challenged by Petitioners are due process and equal protection claims.

REASONS FOR DENYING THE PETITION

The Minnesota Supreme Court ruled that the error which caused some commercial or industrial properties to be overtaxed, occurred during the assessment process. That process is when the assessor determines the EMV, the classification or treatment and the Net Tax Capacity of the property. It is undisputed that in Hennepin County, if the assessor determined that the property was to receive commercial low class, the EMV of the property was multiplied by the correct two tiered low class rate to arrive at Net Tax Capacity. If the assessor determined that the property was to receive commercial regular class, the EMV of the property was multiplied by the correct single flat regular class rate. The error occurred in the assessor's decision with regard to which class or treatment was appropriate for the property. It is undisputed that once that decision was made, the correct class rate corresponding to the treatment decided upon, was used. Consequently, the error was not an "arithmetic", "mathematical" or clerical error, but an error in which treatment to use, followed by the application of the correct class rate corresponding to the erroneously determined class or treatment. The Minnesota Supreme Court described this error in an inartful manner as applying the "wrong class rates" to commercial or industrial property. Petitioners' Brief app. at 7a.

In describing the three notices received by taxpayers, the Minnesota Supreme Court stated they "did not contain information from which respondents could determine that the counties applied the wrong class rate." Petitioners' Brief app. at 7a. As previously pointed out, the error was not in applying the "wrong class rate" but in the assessor's decision

of which class or treatment the property was supposed to receive. That decision, in descriptive words, was included on all of the notices. It is undisputed that in Hennepin County, if the property received the commercial low class treatment, the notices contained the words "commercial" or "industrial" followed by the words "low-rate" or "preferred." If the property received the commercial regular class treatment, the notices contained only the words "commercial" or "industrial." While it is true that the numerical class rates were not included, descriptive words showing the assessor's determination of class or treatment were included on the notices.

Petitioners stated that "it is undisputed that taxpayers could not determine, from the information that was provided in the bills and notices, that erroneous rates had been used." Petitioners' Brief at I. This statement is not correct, and is misleading. The error was not in applying erroneous rates but in applying correct class rates after making an error in the decision of which class or treatment to use. It ***was*** possible from the words used on the bills and notices to know whether the assessor determined the property received the commercial low class or the commercial regular class.

Petitioners have not challenged the constitutionality of any Minnesota statutes. The due process and equal protection challenges are based on the administration of the tax law system. Petitioners' Brief at I. Petitioners have indicated that the Minnesota Supreme Court "concluded that the statute of limitations for challenging illegal taxes had expired *before many of the taxpayers had even received their tax bills.*" Petitioners' Brief at 2. This statement is not true. Because the constitutionality of statutes has not been questioned, it is important to look at the facts as they existed rather than a hypothetical situation which Petitioners have proposed. Hennepin County Respondents have shown through evidence in the record that during the period in question, Property Tax Statements for commercial or industrial property were mailed

to taxpayers between seventy-three and thirteen days before the deadline for filing tax petitions. *See supra* subsection 3c. Additionally, prior to 1995, the statute of limitations for filing Chapter 278 Petitions was May 15th rather than March 31st of the year the taxes were payable. *See* 1994 Minn. Laws, ch. 587, art. 5, §§ 14 and 32. With this information, the evidence shows that Hennepin County taxpayers ***always*** received their Property Tax Statements before the statute of limitations for challenging property taxes expired.

Petitioners have failed to mention to this Court that in 1997, the Minnesota Legislature abolished the two classes or treatments for commercial or industrial property. For taxes payable in 1998 and subsequent years, there was only one class or treatment and all property received a lower percentage on the first $150,000 of value with a higher percentage on the remainder as a class rate. *See* 1997 Minn. Laws, ch. 231, art. 1, §§ 7 and 22 and Minn. Stat. § 273.13, subd. 24 (a) (1) (2000). Therefore, the issues raised by this action are no longer applicable.

I. WHERE THE ERROR IN THE PROPERTY TAX SYSTEM IS THE ASSESSOR'S DETERMINATION OF CLASS OR TREATMENT, TAXPAYERS RECEIVED DUE PROCESS WHERE THEY RECEIVED THREE NOTICES CONTAINING DESCRIPTIVE WORDS WHICH UNEQUIVOCALLY IDENTIFIED THE CLASS OR TREATMENT OF THEIR PROPERTY PRIOR TO THE RUNNING OF THE STATUTE OF LIMITATIONS FOR JUDICIAL REVIEW OR ADMINISTRATIVE REVIEW.

It is undisputed that a post deprivation system of reviewing taxes complies with due process requirements when the state provides "meaningful backward-looking relief to rectify any unconstitutional deprivation." *McKesson Corp*

v. Division of Alcoholic Beverages & Tobacco 496 U.S. 18, 31 (1990). In order to meet due process requirements the state must also provide taxpayers with a "fair opportunity to challenge the accuracy and legal validity of their tax obligations." *McKesson*, 496 U.S. at 39. In order to provide this fair opportunity to challenge the tax, taxpayers must receive "notice reasonably calculated, under all the circumstance, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950).

This case boils down to whether the notices given were adequate to meet due process requirements. Hennepin County has shown that the error Petitioners complained about, was the class or treatment the assessor determined for Petitioners' properties. Hennepin County has shown that Petitioners received three notices specifically identifying with descriptive words, the class or treatment the assessor assigned to the property. All of the notices for the years in question were sent before the statute of limitations expired for the filing of Chapter 278 Petitions or submitting applications for abatements.

Petitioners seem to indicate that if Hennepin County would only have listed the numerical class rate on these notices, so that it could be compared to the relevant Minnesota Statute, the notice would have met due process standards. Petitioners' Brief at 15-16. Using these rates as an example, the notices would say "commercial 3.0/5.06" for the commercial low class and "commercial 5.06" for the commercial regular class. However, the actual class rates do not always appear in Minnesota statutes. Class rates for commercial property varied from year to year by legislative direction and were permitted to be determined by the governor for some years and the commissioner of revenue for other years. *See* 1989 Minn. Laws. 1st Sp. Sess., ch. 1, art. 2, §§ 5 and 8.

It is interesting to note that Petitioners have never listed the class rates for the years in question. The only place in which the class rates were listed was on pages 6 and 7 of Hennepin County's Memorandum in Support of the Motion for Summary Judgment in the trial court. Petitioners stated that the change in class rates over the years "had no bearing on the legal issues in the case." Petitioners' Brief at 2 n.1. Hennepin County agrees with that statement and believes that the actual numerical class rates are not important. The important factor in this case is not that the taxpayer received notice of the numerical class rate of the property, but that the taxpayer received notice in words which described which class or treatment taxpayer's property received, which he or she could then compare to the class or treatment the property should have received. This required the taxpayer to have some basic knowledge of the various property classes or treatments and how they were identified. However, this would also be true if Hennepin County identified the class or treatment on the notices by the numerical class rates.

In short, Petitioners are quibbling about what type of notice should be given and that the notice they propose is better notice than the notice given by Hennepin County Respondents. Petitioners stated that the "counties did not offer *any* information that would put reasonable taxpayers on notice that an incorrect class rate was being applied ..." Petitioners' Brief at 15. That is untrue. Hennepin County Respondents have shown, that with very little basic knowledge of the tax system, if a taxpayer looked at any one of the three notices received, it would have taken seconds to discover whether or not the property had the commercial low class treatment or regular class treatment. Hennepin County does not believe that the notice proposed by Petitioners is better than the notice given. However, due process does not require that the "best" notice be given, only reasonable notice.

II. THE ERRORS IN CLASSIFICATION OR TREATMENT OF PROPERTY WHICH WERE NOT INTENTIONAL OR ARBITRARY OR SYSTEMATIC DID NOT VIOLATE THE EQUAL PROTECTION CLAUSE.

This Court has stated that "[i]ntentional systematic undervaluation by state officials of other taxable property in the same class contravenes the constitutional right of one taxed upon the full value of his property... [citations omitted]." "The equal protection clause ... protects the individual from state action which selects him out for discriminating treatment ... [citations omitted]." *Allegheny Pittsburgh Coal Co. v. County Comm'n,* 488 U.S. 366, 345 (1989). The Minnesota Supreme Court has stated, "discrimination in the imposition of the tax burden, resulting from systematic, arbitrary or intentional undervaluation of some property as compared to the valuation of other property in the same class, violates the uniformity clause of ... [the Minnesota Constitution] and the equal protection clause of ... [the U.S. Constitution]." *United National Corporation v. County of Hennepin,* 299 N.W.2d 73, 75 (Minn. 1980). The Minnesota Supreme Court found that the evidence in the record showed that errors in the assessment were bureaucratic errors and that Petitioners failed to prove that they were intentional, arbitrary or systematic. As such, the errors did not violate the Equal Protection Clause. Petitioner cites *Village of Willowbrook v. Olech*, 528 U.S. 562 (2000) for the proposition that the action of government officials can be a violation of the equal protection where a person was treated differently than other similarly situated individuals and there was no rational basis for the difference in treatment. Petitioners' Brief at 23-24. In *Olech*, plaintiff alleged that the reason for the different treatment was because of "vindictive action" on the part of government officials. "Vindictive

action" is intentional by definition and therefore different from the actions in this case.

Petitioner cites *Logan v. Zimmerman Brush Co.*, 455 U.S. 422 (1982) for the proposition that differential treatment because of "isolated ... bureaucratic oversight" is a violation of equal protection. Petitioners' Brief at 24. However, this Court found the violation to be due process not equal protection. It was only in a concurring opinion that Justice Blackman indicated that there was also a violation of equal protection under the circumstances. *Logan* has no application to instant case because it was decided on due process grounds and it was an example of where the violation occurred during the appeal process which is not the situation in the instant case.

III. THE EQUAL PROTECTION CLAIM IS SUBJECT TO THE SAME STATUTE OF LIMITATIONS IMPOSED ON OTHER PROPERTY TAX CLAIMS.

The equal protection claim relates to errors in the assessment by the assessor which the Minnesota Supreme Court found to be bureaucratic errors. As such, an equal protection claim was capable of being alleged and litigated during the Chapter 278 process. The Minnesota Supreme Court has seen a large number of equal protection claims in the context of appeals from the Tax Court or the District Court involving the Chapter 278 process. *See e.g. Westling v. County of Mille Lacs*, 581 N.W.2d 815 (Minn. 1998); *Rio Vista Non-profit Housing Corporation v. County of Ramsey*, 335 N.W.2d 242 (Minn. 1983); *Hegenes v. State*, 328 N.W.2d 719 (Minn. 1983); *Matter of McCannel*, 301 N.W.2d 910 (Minn. 1980); *United National Corporation v. County of Hennepin, supra* and *Hamm v. State*, 255 Minn. 64, 95 N.W.2d 649 (1959). The equal protection claims must be brought during the Chapter 278 process and are subject to the statute of limitations imposed by Chapter 278.

Petitioners claim that equal protection claims have a six year statute of limitations in Minnesota. They cite *Jacobson v. Board of Trustees*, 627 N.W.2d 106 (Minn. App. 2001) which involved allegations of breach of contract, promissory estoppel, unjust enrichment and impairment of contract. The court found that those claims all had a six year statute of limitations. The court also found that under the facts of the case, the equal protection claim was governed under the "residual" six year statute of limitations. Minn. Stat. § 541.05, subd. 1. (5). This statute of limitations is not applicable to property tax matters but only to injury to the rights of another "not arising on contract, and not hereinafter enumerated." Equal protection claims arising out of property tax assessments are governed by the Chapter 278 statute of limitations. Therefore, failure to file a timely Chapter 278 Petition precludes recovery under the Equal Protection Clause of the Constitution.

CONCLUSION

The Petition for Writ of Certiorari should be denied.

Dated: February 15, 2002

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Supreme Court, U.S.
FILED
FEB 15 2002
CLERK

(3)

No. 01-1061

In the
Supreme Court of the United States

PROGRAMMED LAND, INC., ET AL.,
Petitioners,

v.

PATRICK O'CONNOR, IN HIS CAPACITY AS TREASURER AND AUDITOR FOR HENNEPIN COUNTY, MINNESOTA, ET AL.,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE MINNESOTA SUPREME COURT

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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Questions Presented

The Dakota County Respondents respectfully disagree with the presentation of the questions appearing in the Petition for Writ of Certiorari and submit the following presentation of the questions for review.

I. Whether the State of Minnesota's statutory remedies that allow the owner of a real property to challenge a county's real property tax assessment process on multiple occasions complies with the requirements of the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

II. Whether a property tax assessment error by the county assessor's office in classifying and applying class tax rates to some commercial and industrial property results in a violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

Parties to the Proceeding and Rule 29.6 Statement

Thomas Novak, in his capacity as Treasurer and Auditor for Dakota County, Minnesota, the Dakota County Board of Commissioners, and Dakota County, Minnesota, are referred to collectively throughout this Brief in Opposition as the "Dakota County Respondents." The Dakota County Respondents accept the Statement of the Parties to the Proceeding as listed in the Petition for Writ of Certiorari.

None of the Dakota County Respondents are corporations.

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STATEMENT OF OPINIONS BELOW

Dakota County Respondents accept the Petitioners' Statement of Opinions Below. The opinion of the Minnesota Supreme Court is included as Exhibit A to the Petition for Writ of Certiorari.

STATEMENT OF JURISDICTION

Dakota County Respondents accept Petitioners' Statement of Jurisdiction.

STATEMENT OF THE CASE

The Petitioners seek review of a decision of the Minnesota Supreme Court in two separate actions that the Minnesota Court of Appeals consolidated for appeal. One action originated in Dakota County district court and the other in Hennepin County district court. The Dakota County and Hennepin County cases contain some unique records and facts that are relevant to the decision of the Minnesota Supreme Court. This Brief in Opposition will focus on the facts and issues that arose in the Dakota County case.

The Minnesota Property Tax System

The Dakota County Respondents are all participants, in varying capacities, in the process of levying and collecting real property taxes in Dakota County, Minnesota. The Minnesota property tax system is a complex process that annually collects revenue for the operation of local units of government including school districts, cities, townships and counties.

To accomplish this task, the Minnesota Legislature has created many different classifications and sub-classifications of real property with differing class tax rates. School

districts, cities, townships and counties adopt their own tax levies in December of each year, and these levies are included in the formula used to calculate the taxes owed for each property for the following year. Therefore, the amount of tax assessed against a property is dependant, in part, upon its geographical location within the county. In Dakota County, sophisticated computer programs perform the task of taking into account all the relevant information and varying factors and calculating the final tax bill for each property.

The component of the property tax system that has been challenged by the Petitioners in this case is referred to as the "assessment process." (Appendix to the Petition for Writ of Certiorari, 15a-16a) The county assessor in each of Minnesota's 87 counties performs this "assessment process" each year and passes the results onto the county auditor. The assessor's tasks include determining the market value of the property, assigning the proper classification to the property and applying the appropriate class tax rate or rates to the property's market value to determine that portion of the full value of the property to which the taxes will be applied. This latter task is referred to in Minnesota tax statutes as calculating the "net tax capacity" of the property. (Appendix to Petition for Writ of Certiorari, 11a-12a).

Through a misinterpretation of the classification statute applicable to commercial and industrial property, the Dakota County assessor's office erred by not assigning the preferred classification to some of those properties in 1993 and 1994. Therefore, a higher tax rate was applied to a portion of the market value of some commercial or industrial properties during those years. There is no allegation that a mechanical or hardware problem arose when the computers calculated the tax bills. The error occurred in the decision of the assessor's office on whether the properties qualified for the preferred class rate, based upon a misapplication of the commercial-industrial property classification statute.

The Petitioners sought a refund of taxes paid in excess of the preferred class tax rate in 1993 and 1994, but did not commence the action within the time required by Minn. Stat. § 278.01 to challenge the taxes paid in 1993. The Petitioners did file their tax petition in time to challenge the "assessment process" for the taxes owed in 1994, and they obtained relief when Dakota County corrected the 1994 tax assessments.

The Petitioners Received Three Notices

The Minnesota Legislature has gone to great pains to provide taxpayers and the public with information pertaining to the annual levy of property taxes and the taxes imposed on each property. Taxpayers receive a notice of the estimated market value of the property in April or May of the year prior to the year the taxes are due. Minn. Stat. § 273.121 (2000). Taxpayers receive a second notice in November of the year preceding the year the taxes are due. This notice is referred to as the "truth-in-taxation" notice. It informs taxpayers of the estimated market value of the property, the proposed classification, an estimate of the amount of the tax due the next year, and notice of the date and time that the local taxing jurisdictions will hold meetings to discuss the local tax levies for the next year. Minn. Stat. § 275.065 (2000). The third notice received by the taxpayers is the actual tax statement containing the amount of the tax due on the property. The statement must be sent to the taxpayers by March 31 of the year the taxes are due. This statement also contains the market value and classification of the property and a break out of the amount of the tax imposed by each of the applicable local taxing jurisdictions. At trial the Petitioners admitted through stipulated facts that they received all of the property tax notices and statements as required by law. (Appendix to Petition for Writ of Certiorari, 64a).

Throughout the Petition, the Petitioners repeatedly refer to their inability to discern the exact tax rates that were

applied to their properties as evidence that they did not receive adequate notice. However, the error of the assessor's office did not occur in the final phase of the taxation process that generated the final tax statement indicating the amount of the taxes owed, but rather in the classification phase. The decision of the assessor on the proper classification, and the application of the associated class tax rates to these properties, was made long before the final tax statement was prepared and mailed to the Petitioners. The Petitioners were informed of the classification their property would receive in both the "truth-in-taxation" notice and the final tax statement. By reviewing this information, the Petitioners could have discovered the classification problem and lodged a protest. They did not do so until after the deadline for obtaining relief from the 1993 taxes had passed. They obtained relief for the 1994 taxes

Minnesota has Provided Multiple, Adequate Remedies

The Minnesota Legislature has created many opportunities for taxpayers to challenge any errors that may occur in the "assessment process."[1] The Minnesota Supreme Court acknowledged that these statutory tools provide a variety of effective remedies for taxpayers to challenge the results of the tax assessment process.[2] The fact that the Petitioners did not realize that a classification error had

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[1] The remedies available to the Petitioners include appearing before the Local Board of Review and Equalization to challenge property valuation, seeking adjustments directly with the County Assessor, filing a tax petition under Minn. Stat. § 278.01 by March 31 of the year the taxes are due to obtain review by a state district court or the Minnesota Tax Court, and filing a request for abatement of taxes with the County by December 31 of the year the taxes are due, or within an additional two years if the error in the assessment process is a clerical one. (Appendix to the Petition for Writ of Certiorari, 21a-22a)

[2] Appendix to Petition for Writ of Certiorari, 21a-22a.

occurred until the deadline for challenging the 1993 taxes does not alter the procedural requirements for challenging the assessment process.

Since 1935 when the Minnesota Legislature adopted the current remedial statute for taxpayers to challenge real property tax assessments (Minn. Stat. § 278.01), the Minnesota Supreme Court has required that taxpayers utilize the statutory remedies and comply with the procedural requirements to obtain relief. The focal point of this litigation is whether the taxpayers acted in a timely manner to preserve their rights to challenge the assessment of their property. The multiple remedies available to the Petitioners comply with Due Process Clause requirements, but the Petitioners failed to employ them in time to challenge the taxes owed in 1993.

The Petitioners Utilized a Statutory Remedy to Obtain Relief From the 1994 Taxes

It is ironic that the Petitioners claim the State does not provide a meaningful opportunity to obtain review of their property taxes when, in fact, the Petitioners were provided relief from the taxes owed in 1994. After learning of the classification problem, the Petitioners filed timely Minn. Stat. § 278.01 tax petitions in Dakota County district court. After investigating the Petitioners' claims, Dakota County lowered the amount of taxes due in 1994 by applying the corrected classification and class tax rate. The Petitioners' successful use of the § 278.01 tax petition process is proof in itself that they had access to a meaningful statutory remedy.

REASONS FOR DENYING THE PETITION

I. ALTHOUGH THE MINNESOTA SUPREME COURT CONSIDERED AND REJECTED THE FEDERAL CONSTITUTIONAL ARGUMENTS OF THE PETITIONERS, IT BASED ITS DECISION ON ADEQUATE STATE LAW, AND NOT ON AN IMPROPER APPLICATION OF FEDERAL LAW.

The Petitioners seek review of a Minnesota Supreme Court decision that focuses almost entirely on specific and unique questions of Minnesota real property taxation laws. The Minnesota Supreme Court decided this case on adequate state law grounds. The Court engaged in a limited, although sufficient, discussion of federal constitutional issues. However, the great bulk of the majority opinion consists of an analysis of state law issues.

A critical component of the decision of the Minnesota Supreme Court below is the application of Minn. Stat. § 278.01 to the specific facts of this case. The Minnesota Legislature created this statutory remedy to provide taxpayers with a speedy resolution of property tax challenges and to maintain the flow of revenue to local governments for their ongoing operations while providing a meaningful post-deprivation remedy to taxpayers. *Fichtner v. Schiller*, 271 Minn. 263, 135 N.W.2d 877, 880 (1965). The Minnesota Supreme Court had no difficulty reaching the conclusion that the Petitioners failed to demonstrate a viable claim under federal constitutional grounds.

Even the dissenting opinion, relied upon by the Petitioners to support their request for review, does not include any discussion concerning the Petitioners' federal constitutional claims. The dissent simply argues for a different interpretation of Minnesota legislative intent and a different limitation for the scope of the tax petition statute, Minn. Stat. § 278.01. The dissent questions the proper

definition of the terms "assessment" and "levy of an illegal tax" as those terms are used in § 278.01. However, there is no argument from the dissenting justices that the federal constitution requires a different outcome in this case. The dissenting opinion does not support the Petitioners' request for review on federal constitutional grounds.

If no significant federal constitution question exists, this Court should not grant the Petition. This Court has recognized that states have broad discretion in constructing systems for local taxation and has adhered to the policy that it will not interfere with state tax matters unless the state's actions result in a violation of federal constitutional rights. *Allied Stores of Ohio v. Bowers*, 358 U.S. 522, 79 S.Ct. 437, 3 L.Ed. 2d 480 (1959). That is clearly not the case here.

The state law basis for the Minnesota Supreme Court's decision is sound, and this court should not review the Minnesota Supreme Court's interpretation and application of the state's property tax laws. There is no significant federal constitutional issue. The facts of this case and the Minnesota Property Taxation System are unique and not of general importance to other states or the nation. Other jurisdictions will not benefit in any significant way from this Court's review of this unique fact situation and Minnesota's tax procedures. This state decision does not merit review by this Court.

II. THE DECISION OF THE MINNESOTA SUPREME COURT IS NOT IN CONFLICT WITH THE PRIOR DECISIONS OF THIS COURT.

The Petitioners suggest that the remedies provided to property taxpayers by the Minnesota Legislature violate the Due Process Clause of the Fourteenth Amendment. The Petitioners also assert that the errors committed by the county assessor in the property assessment process violate the Equal

Protection Clause of the Fourteenth Amendment. The Petitioners are wrong on both counts.

1. Equal Protection

The Minnesota Supreme Court did not find any actionable claim under the Equal Protection Clause of the Fourteenth Amendment. However, the Petitioners assert that the Minnesota Supreme Court utilized the wrong standard when it reached this conclusion.

The Minnesota Supreme Court required the Petitioners to demonstrate that the assessor's classification error was intentional, systematic or arbitrary to state a valid Equal Protection claim. (Appendix to the Petition for Writ of Certiorari, 23a). The burden imposed upon the Petitioners is consistent with prior decisions of the Minnesota Supreme Court and this Court.

In *Allegheny Pittsburgh Coal Co. v. County Commissioner of Webster County*, 488 U.S. 336, 339-340, 109 S.Ct. 633, 102 L.Ed. 2d 688 (1989), a viable Equal Protection Clause claim was asserted when the trial court found that the Webster County assessor "systematically and intentionally" violated the Equal Protection Clause by intentionally assessing property at 50% of the most recent sale price for the property. In *Iowa-Des Moines National Bank v. Bennett*, 284 U.S. 239, 245, 52 S.Ct. 133, 76 L.Ed. 265 (1931), the court found, or was able to assume based upon the facts presented, that intentional, systematic discrimination existed that gave rise to an Equal Protection Clause claim. This Court stated, in *Village of Willowbrook v. Olech*, 528 U.S. 562, 120 S.Ct. 1073, 1074-1075, 145 L.Ed. 2d 1060 (2000), that the purpose of the Equal Protection Clause is to prevent intentional and arbitrary discrimination.

The Minnesota Supreme Court employed the proper standard for determining whether the Petitioners demonstrated a viable Equal Protection Clause claim as set

forth by this Court. Since the Petitioners did not produce evidence that the county engaged in intentional or arbitrary discrimination, the Minnesota Supreme Court correctly concluded that there was no violation of the Equal Protection Clause.

2. Due Process

The Petitioners assert that they received inadequate notice of the information needed to contest the taxes assessed against their property. They also suggest that the remedies provided by the Minnesota Legislature to contest property taxes are not meaningful or do not permit timely intervention. In fact, the notices of the relevant information regarding property taxes received by and the remedies available to Minnesota property taxpayers are both meaningful and timely.

A. The Petitioners received adequate multiple notices

Taxpayers receive three separate notices or statements regarding the value, classification and amount of taxes assessed against their property. For the taxes payable in 1993 and 1994, the notices for the property that was to receive the lower tax rate on the first $100,000 in value listed the classification as "commercial preferred" or "industrial preferred." The Petitioners' property tax notices and bills did not include this designation. The lack of the "preferred" classification designation on their notices and tax statements indicated that they would not receive this tax break. The "truth-in-taxation" notices were mailed to the Petitioners in mid-November of the year preceding the year the taxes were due. This notice contained all of the information needed to determine whether the assessor intended to apply the preferred tax rate to this property.

The Petitioners assert that the exact tax rates to be applied should have been included in the notices and statements. For the "truth in taxation notices," this would not be possible. At the time those notices are mailed, the extension rates are not known since the local taxing jurisdictions have not set their tax levies for the following year. Regarding the final tax statement, the Minnesota Supreme Court recognized that it would not be feasible to require counties to put every piece of information related to the complicated calculation of the amount of the property taxes into the tax statements. However, approximately 4 _ months prior to the deadline for filing a tax petition, the Petitioners did receive sufficient information to conclude that their property was not going to receive the "preferred" property lower tax rate. The notices received by the Petitioners were sufficient to comply with Due Process Clause requirements.

B. The Petitioners had multiple opportunities to challenge the tax assessments

The taxation of real property is an imperfect science. The exact market value of a parcel of land at any point in time is open to question. The proper classification for property based upon its use or other relevant factors may be a matter of debate. A property may be eligible for a reduced tax rate based upon a classification that the assessor does not assign and does not apply to that property. State courts and legislatures have recognized that taxpayers must have a mechanism to obtain review of the tax assessment process. In any of these situations, when the state provides a post-deprivation remedy such as the tax petition process or abatement process in Minnesota, the Due Process Clause requires that this process provide "an opportunity to contest the validity of the tax and a 'clear and certain remedy' designed to render the opportunity meaningful by preventing

any permanent unlawful deprivation of property." *McKesson Corporation v. Division of Alcoholic Beverages and Tobacco*, 496 U.S. 18, 40, 110 S.Ct. 2238, 2252, 110 L.Ed.2d 17 (1990). In Minnesota, property taxpayers have several opportunities to challenge any errors occurring in the tax assessment process and, collectively, they clearly satisfy the requirements of the Due Process Clause.

Taxpayers have the option to appear before the Local Board of Assessment and Equalization. Taxpayers can file a tax petition pursuant to Minn. Stat. § 278.01 and litigate their concerns before the district court or Minnesota Tax Court. They can also file abatement requests directly with the County Board in the county where the property is located. Every year many taxpayers employ these remedies to obtain relief from errors. These remedies clearly satisfy the Due Process Clause fundamental requirement of providing a meaningful opportunity to be heard. The fact that Dakota County granted the Petitioners relief for the taxes payable in 1994 after they filed a timely § 278.01 tax petition is proof of that fact.

States are free to impose procedural requirements on taxpayers who wish to obtain post-deprivation relief, and these can include "relatively short statutes of limitations." *McKesson*, 496 U.S. at 45. States can also terminate a taxpayers' claim for failure to comply with procedural rules. *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 102 S. Ct. 1158, 71 L.Ed. 2d 265 (1982). Minnesota's statute of limitations for commencing tax petition actions under § 278.01 is a reasonable restriction that encourages prompt review of local tax assessments while securing adequate revenue for ongoing government operations. As noted by the Minnesota Supreme Court, the § 278.01 deadline occurred well after the date the Petitioners received the "truth in taxation" notices.

After reviewing the facts of this case, the Minnesota Supreme Court properly concluded:

> Due process does not require any particular form of process as long as it provides notice and a meaningful opportunity to be heard. Based upon the variety of means provided in Minnesota Statutes to challenge property taxes, we conclude that respondents received constitutionally sufficient due process.

Appendix to Petition for Writ of Certiorari, 21a-22a.

The Minnesota Supreme Court applied this Court's standard for federal due process protections and properly concluded that no violation of the federal Due Process Clause occurred here.

C. Petitioners successfully utilized Minn. Stat. § 278.01 to obtain relief for one of the two tax years when the incorrect classification was applied

The Minnesota Legislature has provided adequate pre-deprivation and post-deprivation remedies to allow property owners to challenge the classification of their property at multiple stages of the tax assessment process. However, the Legislature has limited the time period during which such challenges must be commenced. The Petitioners failed to commence timely challenges to the classification of their properties and, therefore, waived their rights to recover any excess tax payments.

The Petitioners complied with the requirements of the tax petition statute, Minn. Stat. § 278.01, for taxes payable in 1994 and obtained relief from Dakota County. However, the Petitioners failed to file a timely tax petition for taxes payable in 1993, and also failed to utilize the other remedies available to them. Therefore, Dakota County did not refund any taxes

paid on these properties in 1993. Based upon these facts, it cannot be said with any true conviction that the Petitioners lacked any meaningful remedy under Minnesota law.

This case does not contain the bait and switch problem that arose in *Reich v. Collins*, 513 U.S. 106, 115 S.Ct. 547, 130 L.Ed. 2d 454 (1994). The Minnesota Legislature has not limited taxpayers to receiving prospective relief only as occurred in *McKesson*. Taxpayers that comply with the procedural requirements of Minnesota's property tax remedies will obtain a meaningful hearing and, if they present a valid claim, a retrospective refund of taxes improperly assessed.

Dakota County provided the Petitioners with relief from the 1994 taxes in compliance with the procedural requirements established by the Minnesota Legislature. The Minnesota property tax remedies are adequate to protect taxpayers' Due Process rights. Intervention by this Court is not necessary.

CONCLUSION

It is understandable that the Petitioners are disappointed the classification error occurred, and that the cause of action to challenge the error for the 1993 taxes expired before they filed a tax petition. However, their disappointment and the facts of this case do not justify overturning Minnesota's statutory mechanism for challenging assessment process errors that has been in existence for 66 years.

The Petitioners' right to challenge the classification of their property, and seek a refund of property taxes paid, is a question of state law and is independent of the federal questions that Petitioners attempt to assert. The Minnesota Supreme Court's decision is based upon legally appropriate and adequate state law grounds. The statutory remedies provided to the Petitioners do not violate any federal constitution provisions. Accordingly, the Dakota County

Respondents respectfully request that this Court deny the Petition for Writ of Certiorari.

Respectfully submitted.

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FEBRUARY 2002

Supreme Court, U.S.
FILED
FEB 19 2002
CLERK

(4)

No. 01-1061

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ON PETITION FOR WRIT OF CERTIORARI
TO THE MINNESOTA SUPREME COURT

BRIEF OF *AMICUS CURIAE* MINNESOTA CHAMBER OF COMMERCE

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QUESTION PRESENTED

1. Whether a state regime for the refund of illegal taxes violates the Due Process Clause when taxpayers are not provided, prior to the running of the statute of limitations for the filing of a challenge, with notice from which they can determine that the taxes are illegal.

2. Whether tax officials violate the Equal Protection Clause when they erroneously tax some taxpayers at a higher rate than they tax other, identically situated taxpayers.

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INTEREST OF *AMICUS CURIAE*

Pursuant to Rule 37 of the Rules of the Supreme Court, the Minnesota Chamber of Commerce (the "Chamber") respectfully submits this brief as *amicus curiae* in support of Petitioners.[1] The Chamber is comprised of almost 3200 member businesses of all sizes, representing Minnesota industry throughout the State. The vast majority of members of the Chamber own real property, much of which is subject to the same property tax scheme at issue in this case. Beyond their particular interests, however, the members of the Chamber of Commerce, and all of the citizens of the State of Minnesota, have a public interest in ensuring that the property tax system is administered consistent with the laws, the Constitution, and principles of fairness and justice.

The Minnesota Supreme Court held that Minn. Stat. § 278.01 is the exclusive remedy by which property owners could challenge clerical errors made by the counties when calculating property taxes on commercial and industrial properties, and disallowed any recovery of property taxes Petitioners overpaid based upon undisclosed calculation errors by county tax officials. In doing so, the court disregarded established principles of due process,

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[1] Pursuant to Rule 37.6, the Chamber states that no counsel for a party has authored this brief in whole or in part and that no person or entity, other than the Chamber, its members, or its counsel has made a monetary contribution to the preparation or submission of this brief. The Chamber has received written consents to file this brief from the Petitioners and Respondents, which have been filed with the Clerk.

destroyed the substantive rights of the Petitioners to be taxed at lawful rates, and approved "bait and switch" tactics engaged in by the Minnesota taxing authorities – conduct long prohibited by this Court. This Court's review is necessary to correct the decision of the Minnesota Supreme Court, which, if not corrected, will likely be used to deprive other taxpayers in Minnesota and other States of the due process rights guaranteed by the United States Constitution.

REASONS FOR GRANTING WRIT

This case presents important issues that significantly affect Minnesota businesses and commercial property taxpayers, and their rights to remedies for payment of illegal or unconstitutional taxes. The facts of this case are well set forth in the Petition, and the Chamber will not reiterate those facts except to emphasize the following: it is undisputed that the State tax system under Minn. Stat. § 278.01 does not provide notices to property taxpayers from which they can determine whether a county is applying the legal tax rate to their property. In February of a given year, taxpayers are provided with a notice describing the classification of the property and the assessed value. A tax rate is not specified on this notice nor can it be deciphered from the information provided. A second notice is provided again in November, but again this notice does not contain any information on the tax rate applied to the property. The county does not send out tax bills until March 31 of the following year. These tax bills likewise do not state the tax rates applicable to the property. The total tax bill for a particular property reflects a tax liability based on local extension rates and tax rates. There is no method by which the property owners can ascertain the tax rate from the tax bill. Although the Minnesota Supreme Court held to the contrary, Minn. Stat. § 278.01 cannot be the exclusive remedy for clerical errors in

the tax rates when the basis for the challenge *is unknown and unknowable within the time limit of the statute.*

In addition to all of the reasons stated in the Petition, this Court should grant further review because the rights of Minnesota business owners to recover illegally exacted taxes have been dramatically curtailed in violation of the Due Process Clause. In the Chamber's view, this case does not represent a one-time occurrence of property owners being denied refunds for overpayment of taxes, but marks a dramatic shift in Minnesota against the rights of property owners to be subject to a fair, non-arbitrary tax system.

I. MINNESOTA BUSINESS OWNERS HAVE NO MEANINGFUL REMEDY WHEN PROPERTY TAXES ARE OVERPAID BASED ON THE MISTAKEN APPLICATION OF TAX RATES

As interpreted by the Minnesota Supreme Court, the procedural and time limitations of Minn. Stat. § 278.01 for seeking refunds of property taxes that are overpaid based on the undisclosed, mistaken application of tax rates cannot withstand scrutiny under the Due Process Clause. The fundamental error of the decision below is the court's unsupported assertion that the Petitioners had an opportunity to challenge the tax within the timeframe provided in Minn. Stat. § 278.01, when it is undisputed that the taxpayers could not have discovered the mistaken application of the tax rate from any notice they received. This is a blatant violation of fundamental notions of due process. *See Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950) (holding that due process requires notice "of such nature as reasonably to convey the required information . . . and it must afford a reasonable time for those interested to make their appearance").

This Court has long held that taxpayer must have some meaningful opportunity to challenge illegal taxes and recover funds paid as illegal taxes. *See, e.g., Atchison, T. & S.F.R. Co. v. O'Connor*, 223 U.S. 280, 285 (1912) ("It is reasonable that a man who denies the legality of a tax should have a clear and certain remedy"); *Ward v. Love County Board of Comm'rs*, 253 U.S. 17 (1920) ("To say that the county could collect these unlawful taxes by coercive means and not incur any obligation to pay them back is nothing short of saying that it could take or appropriate [property] arbitrarily and without due process of law"); *Carpenter v. Shaw*, 280 U.S. 363, 369 (1930) ("a denial by a state court of a recovery of taxes exacted in violation of the laws or Constitution of the United States by compulsion is itself in contravention of the Fourteenth Amendment"); *Montana Nat'l Bank of Billings v. Yellowstone County*, 276 U.S. 499, 504 (1928) (bank enjoyed "an undoubted right to recover" the moneys it paid under a discriminatory tax); and *Iowa-Des Moines Nat'l Bank v. Bennett*, 284 U.S. 239, 247 (1931) (tax that violated the Equal Protection Clause can be corrected only "if either their competitors' taxes are increased or their own reduced").

More recently this Court has had the opportunity to expand on these holdings. In *McKesson Corp. v. Division of Alcoholic Beverages & Tobacco,* 496 U.S. 18 (1990), the Court was faced with Florida's refusal to refund taxes paid by wholesale liquor distributors who successfully challenged a Florida excise tax that gave preferential treatment to beverages that were manufactured from Florida-grown citrus and other agricultural crops and then bottled in state. The Florida Supreme Court reasoned that no refund was necessary because of "equitable" considerations and the State had collected the tax under the good faith presumption that the tax was valid. *Id.* at 26. A unanimous Court reject the

State's contention that due process did not require return of the taxes collected, and held:

> If a State places a taxpayer under duress promptly to pay a tax when due and relegates him to a postpayment refund action in which he can challenge the tax's legality, the Due Process Clause of the Fourteenth Amendment obligates the State to provide meaningful backward-looking relief to rectify any unconstitutional deprivation.

Id. at 31 (footnotes omitted). To satisfy the requirements of the Due Process Clause, a State must provide not only a meaningful opportunity to challenge the accuracy and legal validity of their tax obligation, but also a "clear and certain remedy," for any erroneous tax collection. *Id.* at 39.

McKesson was followed by *Reich v. Collins*, 513 U.S. 106 (1994), where the Georgia Supreme Court had rejected a taxpayer's claim under a general refund statute, dismissing any due process concerns because a predeprivation remedy was available. This Court reversed because

> no reasonable taxpayer would have thought that [the predeprivation procedures] represented, in light of the apparent applicability of the refund statute, the exclusive remedy for unlawful taxes.

Id. at 111. Before the state court ruling, taxpayers had no way of knowing that they could not pursue a postpayment refund. The Court emphasized that a state "has the flexibility to maintain an exclusively predeprivation remedial scheme, so long as that scheme is 'clear and certain.'" *Id.* at 110-111. On the other hand, states may not "bait and switch" by

offering "what plainly appears to be a 'clear and certain' postdeprivation remedy and then declare, only after the disputed taxes have been paid, that no such remedy exists." *Id.* at 108, 111.

This Court was again required to invalidate a state taxing scheme in *Newsweek, Inc. v. Florida Dept. of Revenue*, 522 U.S. 442 (1998). In violation of the First Amendment of the Constitution of the United States, Florida exempted newspapers, but not magazines, from sales tax. Newsweek, a magazine publisher, sought a refund of the taxes paid under the illegal scheme. The Florida court denied the request, holding that Newsweek had a meaningful predeprivation remedy, despite the fact that Florida law had long permitted taxpayers to seek refunds for taxes paid under an unconstitutional statute. This Court rejected the Florida court's sudden elimination of a longstanding procedure for claiming refunds for improperly paid taxes, and noted:

> While Florida may be free to require taxpayers to litigate first and pay later, due process prevents it from applying this requirement to taxpayers, like Newsweek, who reasonably relied on the apparent availability of a postpayment refund when paying the tax.
>
> Newsweek is entitled to a clear and certain remedy and thus it can use the refund procedures to adjudicate the merits of its claim.

Id. at 444-45.

These principles of law were completely ignored by the Minnesota Supreme Court. There can be little room to

doubt that the Minnesota Supreme Court's opinion flouts this Court's precedents on refunds in illegal tax cases.[2]

As in *Reich* and *Newsweek*, "no reasonable taxpayer would have thought" that they must contest the amount of their property taxes before they possess information that the taxes were improperly calculated. Indeed, Minnesota law requires county auditors to charge taxpayers "the proper amount of taxes." Minn. Stat. § 274.09. Minnesota property taxpayers, therefore, have a right to rely upon the correctness of their tax bills. *See Cooperative Power Ass'n v. Astleford*, 386 N.W.2d 313, 315 (Minn. Ct. App. 1986).

Furthermore, nowhere in Minn. Stat. § 278.01 does the legislature refer to the assessment and levy process as including the mathematical calculation of tax rates. The statute explicitly refers only to assessments or the tax levied. The Minnesota Supreme Court has noted that a taxpayer's remedies for relief on the basis that the real property has been unfairly or unequally assessed are statutory and a remedy is available under Minn. Stat. § 278.01. *See Evanson v. Comm'r of Taxation*, 280 Minn. 559, 561, 159 N.W.2d 259, 261 (1968). The same court has also noted that an appeal under Minn. Stat. § 278.01 is the exclusive remedy to contest unfair, unequal, or erroneous valuation. *See State v. Elam*, 250 Minn. 274, 84 N.W.2d 227 (1957). Further, pointing to Minn. Stat. § 278.01, the supreme court has stated "Minnesota law provides a mechanism for a property owner to contest a county's assessment of real estate." *BFW Co. v. County of Ramsey*, 566 N.W.2d 702, 704 (Minn.

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[2] It appears that the States in general have had difficultly following *McKesson* and its progeny. *See* Petition at 22 n.13.

1997). In short, before this case, the Minnesota Supreme Court has consistently read Minn. Stat. § 278.01 as applicable to disputes concerning valuation, classification and special assessment, not errors in the application of tax rates. The Minnesota Supreme Court changed the rules in the middle of the game, in clear violation of due process by holding that Minn. Stat. § 278.01 was the exclusive remedy available to Petitioners. *See Reich*, 513 U.S. at 110-11, and *Newsweek*, 522 U.S. at 444-45.

Even under the broadest interpretation, a challenge to the tax rate cannot be construed as a challenge to the tax assessed or levied. The taxpayers' dispute in this case has nothing to do with the assessment process and is wholly unrelated to the process of determining the estimated market value or the classification of a property. Accordingly, on its face, tax rate disputes are clearly outside the domain of Minn. Stat. § 278.01. Before this case, no reasonable taxpayer would assume that the statute applied to discovery of errors that were not knowable prior to the expiration of the time to challenge the tax, particularly given that Minnesota law explicitly allows taxpayers to rely upon county tax officials' proper execution of their statutory duty to impose taxes based upon lawful rates.

Finally, the design of this statute is for an appeal of an assessment, based on value and classification, not a challenge to the tax rate. Under the statute, taxpayers have one year to petition on the valuation and classification of the property. However, a tax bill often is not sent out March 31, when the time to file a petition under Minn. Stat. § 278.01 is either about to expire or has expired. The Minnesota Supreme Court determined that the state legislature provided taxpayers with only one year to appeal an assessment when the error could not be discoverable in the one-year period. The court's strained reading of the statute leaves one

conclusion: that the legislature deliberately failed to provide a fair and meaningful opportunity to dispute the tax rate. The Minnesota Supreme Court's decision is not only contrary to principles of fairness and justice, but also unconstitutional as failing to provide a fair opportunity to dispute the erroneous tax rate. *McKesson*, 496 U.S. at 31 ("The Due Process Clause . . . obligates the State to provide meaningful backward-looking relief to rectify any unconstitutional deprivation.").

As Justice Stringer fittingly noted in his dissent: "Applying the statute of limitations set forth in section 278.01 to a claim that becomes knowable on the very date of expiration is an 'absurdity too gross to be insisted on.'" (App. 26a (citing *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 177 (1803)). Further review by this Court is warranted.

II. THE MINNESOTA SUPREME COURT HAS NOT ONLY DEPRIVED PETITIONERS OF THEIR DUE PROCESS RIGHTS, BUT ELIMINATED THE AVAILABILITY OF COMMON LAW REMEDIES TO FUTURE TAXPAYER LITIGANTS

A. Common Law Remedies Have Been Available Historically to Minnesota Taxpayers

The Chamber is particularly concerned about the Minnesota Supreme Court's decision because it eliminates substantive rights that Minnesota property taxpayers had relied on for at least 100 years. Before this case, it was unquestioned that, in the interest of fairness and justice, equitable remedies must be available to taxpayers who have overpaid their taxes due to an error by taxing authorities, which was not discoverable by the taxpayers. The Minnesota Supreme Court specifically reached this

conclusion in *Wheeler v. Board of Comm'rs of Hennepin County*, 87 Minn. 243, 91 N.W. 890 (1902) (taxes paid based on erroneous statement submitted by county auditor are not voluntary or made without mistake of fact and accordingly are recoverable as excessive payment).

As noted by the Petitioners, *Wheeler* was good law and had been relied on by the Minnesota Court of Appeals as recently as 1986. *See Cooperative Power Ass'n v. Astleford*, 386 N.W.2d 313, 315 (Minn. Ct. App. 1986). The Minnesota Supreme Court, however, effectively overturned *sub silentio* its decision in *Wheeler*, and eliminated important common law rights taxpayers had enjoyed for decades.[3]

Not only did the court change the rules mid-game, a classic "bait and switch" prohibited in *Reich* and *Newsweek*, the court made it nearly impossible for future litigants to be successful when they make a claim for a tax refund when they have paid in reliance upon tax information and demands provided by the State or its subdivisions.

The statutory scheme for imposing property taxes has not changed. Therefore, the net effect of the Minnesota Supreme Court's decision is to allow the government to act

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[3] This action not only violated the Petitioners' due process rights, but also violated the Remedies Clause of the Minnesota Constitution. Minn. Const. Art. I, § 8. The Remedies Clause prohibits the legislature from eliminating those remedies that vested at common law. *Olson v. Ford Motor Co.*, 558 N.W.2d 491 (Minn. 1997). Taxpayers had a vested right to recover property tax overpayments made under a mistake of fact since *Wheeler* in 1902. The legislature could not have eliminated this remedy when it enacted Minn. Stat. § 278.01 in 1935.

unlawfully without assuming any duty to undo deprivations caused by the government's own failure to comply with the law. It also shifts the burden to taxpayers to discover illegalities before an arbitrary deadline or forfeit any opportunity to seek redress of undisclosed and improper actions by government officials charged with enforcing the laws uniformly.

B. Common Law Equitable Remedies Should Be Available to Taxpayers Who Have Overpaid Property Taxes Based on Miscalculation of Tax Rates by the Counties

In the interest of fairness and justice, equitable remedies must be available to taxpayers who have overpaid their taxes due to an error by taxing authorities, which was not discoverable by the taxpayers. As noted, supra, the Minnesota Supreme Court specifically reached that conclusion in *Wheeler*. There is no reason the same result should not be reached here.

A tax payment is not considered voluntary when made under a mistake of fact. *Atchison, T. & S.F.R. Co. v. O'Connor*, 223 U.S. 280 (1912), (holding that a taxpayer pays "under duress" when he proffers a timely payment merely to avoid a "serious disadvantage in the assertion of his legal ... rights" should he withhold payment and await a state enforcement proceeding to challenge the tax scheme's validity "by defense in the suit.") Such a mistake may consist of some official action by the tax-collecting officer, the correctness of which the taxpayer may rely upon. *Wheeler*, 91 N.W. at 890. When a mathematical error is made, it can and should be corrected *whenever it is discovered.*

Allowing equitable actions to correct mere clerical errors in tax bills will cause no harm to the tax system. First, actions to correct mathematical errors are not directed at the adjudicative and fact intensive process of assessment. That procedure, and challenges to what is essentially a fact-finding process, may properly be limited in time and scope. This is what Minn. Stat. § 278.01 does. However, challenges based on clerical errors are not the same, and need not be subject to the same limitations.

The rule concerning judgments in civil litigation provides a good analogy. Courts have broad powers to correct clerical mistakes, but narrowly circumscribed powers to modify the merits of judgments once they become fixed. The Federal Rules of Civil Procedure allows for correction of clerical errors at any time. Rule 60(a) provides in relevant part as follows:

> Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the court *at any time* of its own initiative or on the motion of any party and after such notice, if any, as the court orders.

Fed. R. Civ. P. 60(a) (Emphasis added.)

There is no requirement in Rule 60(a) of any showing of "good cause", nor are there any time limits for seeking correction of a clerical mistake. *See, e.g., Chavez v. Balesh*, 704 F.2d 774, 776 (5th Cir. 1983). The reasoning behind the rule is obvious – although judgments should be final, erroneous judgments should be corrected when the error is merely clerical because judgments are significant public records having a profound effect on people and their real and personal property. This Court has noted the fundamental principles attending the finality of judgments. *Arizona v.*

California, 460 U.S. 605 (1983). Notwithstanding this principle, even where a case has been reduced to a final and legally binding judgment, the law recognizes that it must be possible to correct clerical and mathematical errors in the judgment at any time. The Minnesota Supreme Court failed to recognize that clerical errors specifically include a mistake in the judgment resulting from miscalculation. *See Knappen v. Freeman*, 47 Minn. 491, 50 N.W. 533 (1891). Moreover, clerical errors may be corrected even after the time to appeal the judgment has expired. Fed. R. Civ. P. 60(a).

This treatment of clerical error is in sharp contrast to the treatment of non-clerical error under Fed. R. Civ. P. 60(b). When adjudicative error is claimed, for instance, that the judgment is not supported by the evidence or that there were procedural errors in reaching the judgment, Rule 60(b) imposes strict time limits for challenges to the judgments, and allows those challenges only on very narrowly defined grounds. In this regard, Rule 60(b) is the functional equivalent of Minn. Stat. § 278.01.

This difference in treatment of clerical error and adjudicative error is a reflection of the important societal need for the finality of judgments, a need highly akin to the need for finality in the scheme of taxation. Allowing equitable relief in cases of claimed clerical error in tax computation is analogous to allowing relief from a judgment under Rule 60(b) for mere clerical error. In both instances, a narrow exception is recognized to the otherwise controlling rules of finality, in order to ensure a system that is neither arbitrary nor unfair, but only appropriately final.

CONCLUSION

The Minnesota Chamber of Commerce respectfully asks this Court issue a writ of certiorari to review the decision of the Minnesota Supreme Court.

Respectfully submitted,

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Dated: February 19, 2002

(5)

Supreme Court, U.S.
FILED
FEB 19 2002
CLERK

No. 01-1061

IN THE

Supreme Court of the United States

PROGRAMMED LAND, INC., *et al.*,
Petitioners,

v.

PATRICK O'CONNOR, TREASURER AND AUDITOR,
HENNEPIN COUNTY, *et al.*,
Respondents.

On Petition for a Writ of Certiorari to the Supreme Court of Minnesota

BRIEF OF *AMICUS CURIAE* TAX EXECUTIVES INSTITUTE, INC. IN SUPPORT OF PETITIONERS

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February 19, 2002

WILSON-EPES PRINTING CO., INC. – (202) 789-0096 – WASHINGTON, D. C. 20001

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On Petition for a Writ of Certiorari to the Supreme Court of Minnesota

BRIEF OF *AMICUS CURIAE* TAX EXECUTIVES INSTITUTE, INC. IN SUPPORT OF PETITIONERS

Pursuant to Rule 37 of the Rules of the Supreme Court, Tax Executives Institute, Inc. respectfully submits this brief as *amicus curiae* in support of Petitioners.[1] Tax Executives Institute (hereinafter "TEI" or "the Institute") is a voluntary, nonprofit association of corporate and other business executives, managers, and administrators who are responsible

[1] Pursuant to rule 37.6, *amicus* TEI states that no counsel for a party has authored this brief in whole or in part and that no person or entity, other than *amicus*, its members, or its counsel, has made a monetary contribution to the preparation or submission of this brief. Tax Executives Institute has received the written consents of the Petitioners and Respondents to the filing of this brief; those consents have been filed with the Clerk of the Court.

for the tax affairs of their employers. The Institute was organized in 1944 and currently has approximately 5,300 members who represent more than 2,700 of the leading businesses in the United States, Canada, and Europe, nearly all of which are engaged in interstate commerce.

The members of the Institute represent a cross-section of the business community in North America. The Institute is dedicated to promoting the uniform and equitable enforcement of the tax laws and to reducing the costs and burdens of administration and compliance to the benefit of both the government and taxpayers, and to vindicating the Commerce Clause, due process, and other constitutional rights of business taxpayers. As tax professionals who recognize the States' and local jurisdictions' rights to collect properly levied taxes and who respect the legitimacy of government tax assessments, our members have a significant interest in the standards applied in assessing the adequacy of remedies accorded taxpayers for unlawfully imposed and collected taxes.

This case raises fundamental questions about the remedies available for taxpayers who have paid excess taxes due to undisclosed miscalculations on the part of government officials. Viewed narrowly, the issue is whether the State of Minnesota improperly denied certain commercial real property owners due process, and therefore any meaningful relief, for property taxes overpaid in reliance on the correctness of tax bills prepared and sent by county officials of Hennepin and Dakota Counties. Viewed broadly, the issue is what obstacles may a state or local jurisdiction constitutionally erect to deny taxpayers a refund of illegally collected taxes.

The Institute's members and the businesses by which they are employed have a keen and vital interest in ensuring the efficacy and effectiveness of remedies provided to taxpayers who are subjected to unlawful taxation. Given the checkered

history of the States on refunding improperly collected taxes, this case promises to affect far more than Hennepin or Dakota County's authority to retain the taxes improperly exacted from the taxpayers. *Amicus* TEI is rightly concerned about the deleterious effect the Minnesota Supreme Court's decision could have on the equitable administration of other state and local taxing schemes relating to business taxpayers.

Because TEI members and the businesses by whom they are employed will be materially affected by the application of the Minnesota Supreme Court's decision, the Institute has a special interest in the outcome of this case.

SUMMARY OF ARGUMENT

1. The core issue in this case is whether taxpayers who have overpaid taxes in reliance on a government prepared and issued tax bill are entitled to refunds of the illegally extracted monies. Programmed Land, Inc. and the other petitioners (hereinafter "affected taxpayers") are property owners in the State of Minnesota who sought refunds of excess real property tax payments made in reliance on tax bills sent by county officials. It is undisputed that the affected taxpayers had no way to determine from the information included in the tax bills that the counties were overcharging them. Although they concede that they overbilled the affected taxpayers, Hennepin and Dakota Counties have steadfastly refused to refund the overpayments. The counties contend that the claims for refund are timed-barred because they were not brought within the time limit specified for assessment challenges in MINN. STAT. § 278.01 (1997).

2. An understanding of the real property tax assessment, notice, and billing cycle in Minnesota is necessary in order to assess the constitutional sufficiency of § 278.01 in this case. Each year an assessment notice is mailed to owners showing the assessed value and classification; if an owner disagrees, it must challenge the county's determin-ations by March 31st of the following year. The deadline for mailing the final tax bill

is same March 31st deadline for challenging the valuation or classification. Although some affected taxpayers received their final bill before the deadline to file a protest, in many cases the deadline had already passed.

3. It should be axiomatic in tax administration that improperly collected tax payments will be refunded. Such a principle squares with the American sense of fairness and enhances voluntary compliance. It is predicated on trust—on the notion that, if the government has done something wrong or if government officials perform their duties haphazardly or not at all—it will not be taxpayers who suffer. For many States, however, the "end" of collecting (and keeping) revenues has increasingly justified the "means" of depriving aggrieved taxpayers of the only true remedy—refunds. Taxpayers who in good faith had paid their taxes found themselves consigned to the role of Tantalus. Hungering and thirsting to be made whole, they reached for a refund from the bough of statutory procedure and past practice, only to have it blown out of reach by the State; belatedly told to stoop to drink relief, they discovered the possibility of a refund had long since drained away.

4. The last two decades have seen a disturbing number of state taxing statutes invalidated on constitutional grounds. Moreover, States have in many cases resisted efforts to provide refunds on grounds the taxpayer failed to abide by the affected State's procedural requirements. Reinterpreting procedural requirements to deny relief for a properly administered, albeit unconstitutional, tax is bad enough. The State of Minnesota here, however, goes even further—taxpayers who had no way of knowing they were billed incorrectly were subjected to procedural obstacles constructed to block their way to a refund of the excess tax payments. The pattern of misbehavior by state or local governments of

refusing to pay over funds properly belonging to taxpayers, whether due to the unconstitutionality of the tax or a hidden miscalculation, must be stopped.

5. When presented with more than 60 applications for overpayment refunds on the same day, Hennepin County decided that the overpayment statute which it had used earlier to permit refunds was no longer applicable; instead, it argued that the one-year statute of limitations in § 278.01 precluded the refunds. The Minnesota Supreme Court validated this result, finding a supposed constitutionally sufficient predeprivation remedy in the assessment protest process. This was in spite of the separate overpayment statute heretofore used to grant refunds and a longstanding Minnesota Supreme Court decision—*Wheeler v. Bd. of Comm'rs of Hennepin County*, 87 Minn. 243 (1902)—that has almost identical facts.

6. In holding that the only option for refund available was using the assessment protest statute to contest the legality of the taxes billed, the Minnesota Supreme Court disregarded two key factors. First, as the court itself acknowledged, there is no way a taxpayer could have known that the county applied an incorrect class rate from any information provided by the counties. Second, the deadline for initiating a claim under the assessment protest statute is March 31st, the same deadline for mailing out the tax bills. In other words, the Minnesota Supreme Court adopted a statute of limitations that will in almost all cases bar recovery even before the cause of action arises. This is the very antithesis of due process.

7. In *McKesson Corp v. Div. of Alcoholic Beverages & Tobacco*, 496 U.S. 18, 31 (1990), this Court stated that, to satisfy the requirements of due process, the State must provide an aggrieved taxpayer either with a predeprivation hearing or with "meaningful backward-looking relief." That relief, the Court said, must be "clear and certain." *Id.* at 39. On its face, Minnesota's statutory scheme comports with this

procedural requirement. This case is before the Court, however, because the court below vitiated that remedy, finding first that the overpayment statute was inapposite and further that Minnesota law provided a constitutionally sufficient predeprivation remedy, to wit: the assessment protest statute, which had never before been extended to cover the non-discretionary act of calculating tax bills.

8. Even assuming that the assessment protest procedure would accommodate the errors of county officials charged with administering Minnesota's property tax statutes, can such a patchwork satisfy the requirement that the taxpayer's remedy be "clear and certain" as required by *Reich v. Collins*, 513 U.S. 106 (1994)? In that case, the Court held that a State may not "reconfigure its scheme, in midcourse"—to "bait" taxpayers into believing that a refund remedy exists, only to "switch" later by claiming its inapplicability. Minnesota here endeavors to shoehorn the affected taxpayers into a refund scheme that, by its very terms, will deny them relief. The court below parsed Minnesota's property tax statutes and analyzed them, not in search of principle or justice, but a loophole. And it did so in the context of improper billing by government officials under circumstances that gave taxpayers no reasonable alternative.

9. This Court is properly loath to impinge on the state courts' prerogative to fashion remedies. But the States' remedial discretion is not unfettered, especially where that discretion has been repeatedly abused or where it is exercised to cloak harmful errors by local government officials. In the past two decades, State after State has distended this Court's holdings in order to eviscerate the protections accorded taxpayers by the Constitution. The States should not be permitted to thwart the judgments of this Court by creating one excuse after another for refusing to return to taxpayers what the States had no right to collect in the first instance. Unless the Court mandates meaningful relief—the immediate

refund of the unlawfully collected taxes—the States will continue to have an incentive to contort their statutes to deny relief for taxpayers deprived of their property.

10. It is time for this Court to say that enough is enough. It is time to reject the States' beguiling interpretations of state law, distended readings of the Constitution, and facile efforts to vitiate the Court's mandates. It is time to say, once again, that "[t]he time for toleration has come to an end." *Griffith v. Kentucky*, 479 U.S. 314, 323 (1987). The Court should grant a writ of certiorari, reverse the decision of the Supreme Court of Minnesota, and order the counties to refund the taxes they unlawfully collected from the Petitioners.

ARGUMENT

I.

The core issue in this case is whether denying refunds to taxpayers who have overpaid *ad valorem* property taxes in reliance on government prepared and issued tax bills violates the Due Process Clause of the Constitution. U.S. CONST. amend. XIV, § 1. *Amicus* Tax Executives Institute respectfully submits that, in denying refunds to the petitioners in this case, the State of Minnesota's actions amount to an unconstitutional "bait and switch" of the type struck down by this Court in *Reich v. Collins*, 513 U.S. 106 (1994).

Programmed Land, Inc. and the other petitioners (hereinafter "affected taxpayers") are owners of commercial or industrial property in Hennepin or Dakota County in the State of Minnesota. The affected taxpayers sought refunds of excess real property tax payments made in reliance on the accuracy of tax bills sent to them by county officials from 1991 to 1996. The overpayments occurred because county taxing officials did not apply a favorable rate to the first $100,000 of assessed value of the affected taxpayers'

properties.[2] The material facts of the case are not in dispute: "The counties applied the wrong class rates to [the affected taxpayers'] class 3(a) property, and [the affected taxpayers], as a consequence, paid excess property taxes." App. at 7a.[3] The affected taxpayers had no way to determine from the information included in the tax bills that the counties were overcharging them. The Minnesota Supreme Court determined that notices provided by the counties "did not contain information from which [the affected taxpayers] could determine that the counties applied the wrong class rate."[4] App. at 7a.

Although they concede that they overbilled the affected taxpayers, Hennepin and Dakota Counties have steadfastly refused to refund property tax overpayments demanded from the affected taxpayers during the relevant tax periods. The counties contend that the claims for refund are timed-barred because they were not brought within the time limit specified for assessment challenges in MINN. STAT. § 278.01 (1997). The Minnesota Supreme Court agreed that because § 278.01

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[2] Minnesota law sets the general rate at 5.06 percent during the years at issue; the favorable rate on the first $100,000 of value for any one parcel in each county varied during this time, but was usually around 3 percent. App. at 3a.

[3] "App." references are to the various appendices bound with the Petition For a Writ of Certiorari, *Programmed Land, Inc.*, et al. *v. Patrick O'Connor, Treasurer and Auditor, Hennepin County,* et al., No. 01-1061 (filed Jan. 16, 2002).

[4] The assessed value of real property subject to tax within a county is multiplied by the appropriate class rates to determine a "net tax capacity" against which various taxing districts (*e.g.*, counties, utility districts, school districts, library boards) compare their budgets for the following year. The class rates are then proportionately extended as necessary to provide the required revenue to support the various taxing districts' budgets, and county auditors apply these rates in generating the tax bills. Neither the rate information nor the various extensions are reflected in the information received by taxpayers, *Id.* at 3-6.

provided a statutory procedure covering Petitioners' claims, common law and equitable remedies are unavailable. App. at 2a.

An understanding of the real property tax assessment, notice, and billing cycle in Minnesota is necessary in order to assess the constitutional sufficiency of MINN. STAT. § 278.01. Each year county assessors determine the assessed value of a parcel of real property and its classification (*e.g.*, residential, commercial, or industrial). An assessment notice is mailed to owners in February showing the assessed value and classification; no information regarding class rates is included in the notice. If an owner disagrees with the valuation or classification, it must challenge the county's determinations by March 31st of the following year. In November of the assessment year, before tax rates are finalized, an estimate of the tax that will be owed is mailed to the owner—no rate information is included, only a total amount—and hence the property owner has no information from which to determine that the county will misapply the rate when calculating the final bill. Under MINN. STAT. § 276.04 (1997), the deadline for mailing the final tax bill is March 31st of the following year, which is also the deadline for filing a timely protest under MINN. STAT. § 278.01. Again, no information on the rates is included with the final tax bill—only an amount due.[5] Regardless, although some affected taxpayers received their final bill before the deadline to file a protest, in many cases the deadline had already passed.

II.

It should be axiomatic in tax administration that improperly collected tax payments, whether due to constitutional infirmity of the tax itself or through an overpayment due to

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[5] MINN. STAT. § 274.09 (1997) requires county auditors to charge taxpayers "the proper amount of taxes," however, and taxpayers should be able to rely on the correctness of their bills.

government miscalculation, will be refunded to their rightful owners. Such a maxim clearly squares with the American sense of fairness, essentially restoring the aggrieved taxpayers to the position they would have occupied had the improper tax not been levied or excess amount billed. Equally important, it encourages taxpayers to pay first and seek redress, when appropriate, later. Hence, this concept is not only just in a philosophical sense, but provides governments a more stable funding source; conversely, an absence of fairness serves to undermine taxpayers' voluntary compliance with our tax systems. Our tax system is predicated on trust —on the notion that, if the government has done something found to be improper or if government officials perform their duties haphazardly or not at all, it will not be the compliant or even complaisant taxpayers who suffer.

Beginning in the 1980s, many fiscally constrained States sought financial gain and routinely breached this bedrock trust in the context of unconstitutional or illegally collected taxes. The "end" of collecting (and keeping) revenues seemed to justify the "means" of first imposing a discriminatory tax and then, upon its invalidation, depriving aggrieved taxpayers of the only true remedy—refunds—by engaging in the governmental equivalent of three-card monte. Trust was supplanted by cynicism. Taxpayers who in good faith had paid their taxes (in reliance on correct tax bills, refund statutes, longstanding judicial precedent, and the aforementioned principle of fair play) found themselves consigned to the role of Tantalus. Hungering and thirsting to be made whole, they reached for a refund from the bough of statutory procedure and past practice, only to have it blown out of reach by the State; belatedly told to stoop to drink relief, they discovered the possibility of a refund had long since drained away.

Is it any wonder that when state and local governments violate the rules of fair play, the people lose faith in the

governmental process and, indeed, in the worth of the rules themselves? Is it any wonder that, absent an explicit mandate that refunds be automatically paid when taxes have been imposed without authority, state and local jurisdictions continue to deprive deserving tax-payers of their tax refunds? Is it any wonder that a local jurisdiction that has overcharged unsuspecting taxpayers truculently refuses to make restitution? Regrettably, it is no wonder at all.

The last two decades have seen a disturbing number of state taxing statutes invalidated on constitutional grounds.[6] Moreover, even after the statutes were voided, some States resisted efforts to compel refunds of the taxes that they had collected under the invalidated laws—first on grounds that the substantive decision should be given prospective-only effect and then on grounds that the taxpayer had failed to abide by the affected State's procedural requirements. Reinterpreting procedural requirements to deny relief for a properly administered, albeit unconstitutional, tax is bad enough. The State of Minnesota here, however, goes even further—taxpayers who had no way of knowing they were

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[6] *See, e.g., Armco Inc. v. Hardesty*, 467 U.S. 638, 645-46 (1984) (West Virginia's business and occupation tax); *Bacchus Imports, Ltd. v. Dias*, 468 U.S. 263, 273 (1984) (Hawaii's exemption of local products from the liquor excise tax); *Metropolitan Life Ins. Co. v. Ward*, 470 U.S. 869, 882-83 (1985) (Alabama's tax on foreign insurers); *Tyler Pipe Indus. v. Washington Dep't of Revenue*, 483 U.S. 232, 248 (1987) (Washington's business and occupation tax); *American Trucking Ass'ns v. Scheiner*, 483 U.S. 266, 286-87 (1987) (Pennsylvania's highway use tax); *Davis v. Michigan Dep't of Treasury*, 489 U.S. 803, 814-15 (1989) (Michigan's tax on federal retirees' pensions); *McKesson Corp. v. Division of Alcoholic Beverages & Tobacco*, 496 U.S. 18, 22 (Florida statute exempting local products from liquor excise tax); *Associated Indus. of Mo. v. Lohman*, 511 U.S. 641, 647-54 (1994) (Missouri's supplemental use tax); *Hunt-Wesson, Inc. v. Franchise Tax Bd.*, 528 U.S. 458, 468 (2000) (California's disallowance of expense deductions without allowing reasonable allocation).

billed incorrectly were subjected to procedural obstacles constructed to block their way to a refund of the excess tax payments. The pattern of misbehavior by state or local governments of refusing to pay over funds properly belonging to taxpayers, whether due to the unconstitutionality of the tax or a hidden miscalculation, must be stopped.

Over the years, the States' refusal to fashion meaningful remedies has been rationalized on equity grounds. Many States argued that the balancing test set forth in *Chevron Oil Co. v. Huson*, 404 U.S. 97, 106-07 (1971), could be applied to safeguard the constitutional rights of taxpayers, while protecting the financial interests of the States.[7] Experience convinced this Court, however, that the *Chevron Oil* standard was too pliant, enabling too many States to construe it in a "heads I win, tails you lose" manner. Consequently, in *Harper v. Virginia Dep't of Taxation*, 509 U.S. 86 (1993), this Court embraced the full retroactivity standard of *Griffith v. Kentucky*, 479 U.S. 314, 323 (1987).[8] One year later, in *Reich*, the Court squarely addressed the issue of remedy, declaring that a State may not hold out what plainly appears to be a "clear and certain" post-deprivation remedy and subsequently declare, after taxpayers have paid the disputed tax, that the remedy is inapplicable to the case at hand. In *Newsweek, Inc. v. Florida Dep't of Revenue*, 522 U.S. 422

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[7] For the *Chevron Oil* balancing test, three separate factors were considered: First, whether the decision to be applied nonretroactively established a new principle of law; second, weighing the merits of the case and given the prior history, purpose, and effect of the rule in question, whether retrospective operation will further or retard its operation; and finally, whether the inequity imposed by retroactive application creates an injustice or hardship. 404 U.S. at 106-07.

[8] *Griffith* holds that new rules for the conduct of criminal prosecutions must apply retroactively to all pending or non-final cases, even if they constitute a "clear break" with the past. 479 U.S. at 328. *Harper* extends the rule to civil cases. 509 U.S. at 99.

(1998), the Court reiterated that while a State "may be free to require taxpayers to litigate first and pay later, due process prevents it from applying this requirement to taxpayers . . . who reasonably relied on the apparent availability of a postpayment refund when paying the tax." *Id.* at 444.

The instant case reprises the question of remedy—a question seemingly resolved by the Court's mandate in *Reich* that the States may not resort to "bait and switch" tactics. *Reich*, 513 U.S. at 111.[9] Here, Hennepin and Dakota County officials admittedly misapplied tax rates and overbilled the affected taxpayers. In contrast to a young child who, having filched some candy from the store, is made to return the candy or pay for it, the counties here defiantly refused to refund the money after the error in billing was discovered by more than a few affected taxpayers. Rather than doing what was right, the counties and the Minnesota Supreme Court engaged tax-payers in a game of remedy roulette in which they changed the rules to ensure that the house would always win. The end result was a denial of due process.

III.

In seeking refunds of the tax overpayments, the affected taxpayers looked primarily to MINN. STAT. § 276.19 (1997), which provides:

> If an overpayment of property taxes arises on a parcel of land for any reason, the responsible county official *shall promptly notify* the payer by regular mail that the overpayment has occurred. The notice must state that amount of the overpayment and identify the parcel on which the overpayment occurred. The notice must also

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[9] *See Carpenter v. Shaw*, 280 U.S. 363, 369 (1930) ("a denial by a state court of a recovery of taxes exacted in violation of the laws or Constitution of the United States by compulsion is itself in contravention of the Fourteenth Amendment"); *Reich*, 513 U.S. at 114.

> instruct the payer how to claim the overpayment and advise that the overpayment is subject to forfeiture under this section.

MINN. STAT. § 276.19, subd. 1 (emphasis supplied). The plain language of this provision requires that affected taxpayers be notified by the counties and given an opportunity to claim a refund. Before September 1996, Hennepin County apparently agreed with this analysis, because it prepared and processed several "Notice of Property Tax Overpayment" forms to refund the overpayments. R.A. at 105-6, 115-21. Only when presented with more than 60 applications for overpayment refunds on the same day did the county decide that the overpayment statute was no longer applicable; instead, it argued that the one-year statute of limitations in § 278.01 precluded the refunds.

After the affected taxpayers successfully sued for refunds in the district courts in each county, Hennepin and Dakota Counties appealed. The Minnesota Court of Appeals held that although the one-year statute of limitations contained in § 278.01 hampered any relief through operation of § 276.19, the affected taxpayers could recover in equity in the face of two Minnesota counties indisputably misleading taxpayers into overpaying property taxes. The Minnesota Supreme Court reversed, however, finding a supposed constitutionally sufficient predeprivation remedy in the assessment protest process.[10]

That holding, however, is deeply flawed. Indeed, a longstanding Minnesota case, *Wheeler v. Bd. of Comm'rs of Hennepin County*, 87 Minn. 243 (1902), demonstrates that the affected taxpayers should have been granted a refund of the overpayments. In facts eerily similar to the case at hand, the

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[10] As noted by Justice Stringer in his dissent, this result is an "application of the strict statute of limitations set forth in section 278.01 to claims the section was not intended to extinguish." App. at 23-24a.

auditor for Hennepin County overstated the amount of tax due on a statement provided to the taxpayer. The Minnesota Supreme Court held that the taxpayer could seek a refund for "money had and received" since he was entitled "to rely upon the implied assertion that the full amount alleged was actually due, and necessary to be paid." *Id.* at 244. *Wheeler* has been relied on by Minnesota taxpayers and courts for a century, has never been questioned, and the dissent below found it dispositive in this case.[11]

Nevertheless, the Minnesota Supreme Court facilely held that the only option for refund available was using the assessment challenge statute to contest the legality of the taxes billed. In doing so, the court resisted the plain reading of the statute and denied taxpayers due process. The court also disregarded two key factors. First, as the court itself acknowledged, there is no way a taxpayer could have known that the county applied an incorrect class rate from any information provided by the counties. Second, the deadline for initiating a claim under the assessment protest statute is March 31st, the same deadline for mailing out the tax bills. In other words, the Minnesota Supreme Court adopted a statute of limitations that will in almost all cases bar recovery even before the cause of action arises. This is the very antithesis of due process, a caricature of good tax administration that compels review and reversal by the Court.

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[11] The affected taxpayers right to recover property tax overpayments pursuant to *Wheeler* cannot have been abrogated by the subsequent enactment of MINN. STAT. § 278.01 years later in 1935, since the Minnesota Constitution includes a clause that prohibits the legislature from eliminating vested common law remedies. MINN. CONST. ART. I, § 8. Therefore, even assuming the legislature intended to make § 278.01 the exclusive remedy for property tax overpayments, it could not prevent the affected taxpayers from obtaining a remedy under common law, *i.e.*, *Wheeler*.

In *McKesson Corp v. Division of Alcoholic Beverages & Tobacco*, 496 U.S. 18, 45-46 (1990), this Court stated that to satisfy the requirements of due process, the State must provide an aggrieved taxpayer either with a predeprivation hearing (without placing the taxpayer seeking such a hearing under duress)[12] or with "meaningful backward-looking relief." 496 U.S. at 31. In other words, "a State need not provide [a] predeprivation process for the exaction of taxes." *Id.* at 37 (footnote omitted). To be meaningful—and constitutionally sufficient—however, the taxpayer's remedy must be "clear and certain." *Id.* at 39 (quoting *Atchison, T. & S.F.R. Co. v. O'Connor*, 223 U.S. 280, 285 (1912) (Holmes, J.)).

On its face, Minnesota's statutory scheme comports with the procedural requirements enunciated in *McKesson* by providing what seemed to be a "clear and certain" refund procedure. This case is before the Court, however, because the court below vitiated that remedy, finding first that the overpayment statute was inapposite and further that Minnesota law provided a constitutionally sufficient predeprivation remedy, to wit: the assessment protest statute, which had never before been extended to cover the nondiscretionary act of calculating tax bills. That the assessment protest procedure was the exclusive predeprivation remedy in this case, however, was not announced until after a group of affected taxpayers applied for refunds *en masse*, since never before had the counties required taxpayers to file a § 278.01 protest to claim such refunds.

Even assuming that the assessment protest procedure would accommodate the errors of county officials charged with administering Minnesota's property tax statutes, can

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[12] The Court explained that "when a tax is paid in order to avoid financial sanctions or a seizure of real or personal property, the tax is paid under 'duress' in the sense that the State has not provided a fair and meaningful predeprivation procedure." 496 U.S. at 38 n.21.

such a patchwork—concocted by the State several years after the taxes were paid—satisfy the requirement that the taxpayer's remedy be "clear and certain"? To pose the question is to answer it. The purpose of the Due Process Clause is to protect individual rights against arbitrary action by the government, but what is more arbitrary than inventing and interposing new requirements after the time for satisfying those requirements has passed? At best, the exclusivity of the assessment protest statute for any refund of real property taxes was a remote possibility when the affected taxpayers overpaid their taxes; at worst, it was conjured out of thin air long after the fact.

In *Reich*, the Court held that a State may not "reconfigure its scheme, in midcourse"—to "bait" taxpayers into believing that a refund remedy exists, only to "switch" later by claiming its inapplicability. This is because stealth remedies—playing "gotcha" with taxpayers—are not consonant with due process. States may not lull taxpayers into paying a tax, certainly not mislead them into doing so—believing that a "clear and certain" post-deprivation remedy exists—only to declare after those taxes have been paid that no such remedy exists. *See* 513 U.S. at 111. The Minnesota Supreme Court's refusal to order a refund in this case is precisely the type of "mischievous consequences" that the Court warned of more than 130 years ago in confirming the application of the Supremacy Clause to this Court's decisions. *The Mayor v. Cooper*, 73 U.S. (6 Wall.) 247, 253 (1867).

Stated bluntly, Minnesota here endeavors to shoehorn the affected taxpayers into a refund scheme that, by its very terms, will deny them relief. The court below parsed Minnesota's property tax statutes and analyzed them, not in search of principle or justice, but a loophole. The Minnesota Supreme Court's ruling emasculates this Court's mandates in

McKesson, Reich, and *Newsweek*—it renders them hollow.[13] And it did so in the context of improper billing by government officials under circumstances that gave taxpayers no reasonable alternative. That the action of the court below might pass muster under federal due process principles beggars the imagination.[14] In *Reich*, this Court refused to permit "bait and switch" tactics by the State of Georgia. How much more appropriate for it to invoke the same rationale here, where taxpayers have been cozened by their local governments? This Court should grant a writ of certiorari and reverse the decision of the Minnesota Supreme Court.

IV.

This Court is properly loath to impinge on the state courts' prerogative to fashion remedies. *See Nat'l Private Truck Council, Inc. v. Oklahoma Tax Comm'n*, 515 U.S. 582, 586 (1995) ("principles of federalism and comity generally counsel that courts should adopt a hands-off approach with respect to state tax administration"). *Reich* stands for the proposition, however, that the States' remedial discretion is not unfettered, especially where that discretion has been repeatedly abused or where it is improperly exercised in circumstances where, as in this case, the Minnesota Supreme Court has chosen to look the other way at what it euphemistically describes as "bureaucratic errors." App. at

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[13] *McKesson, Reich*, and *Newsweek* are not even mentioned in the opinion below; the Minnesota Supreme Court instead relies on an 1895 case, *Winona & St. Peter Land Co. v. Minnesota*, 159 U.S. 526 (1895), as this Court's most relevant expression of due process requirements in state taxation cases.

[14] *See McKesson*, 496 U.S. at 39 (if a tax is beyond the State's power to impose, the State has no choice but to "undo" the unlawful deprivation by making refunds "because allowing the State to 'collect these unlawful taxes by coercive means and not incur any obligation to pay them back . . . would be in contravention of the Fourteenth Amendment.'" (*quoting Ward v. Bd. of Comm'rs of Love County*, 253 U.S. 17, 24 (1920)).

23a. History is irrefutable: In the past two decades, State after State has distended this Court's holdings—on the merits, on the retroactivity question, and now on the issue of remedies—in order to eviscerate the protections accorded taxpayers by the Constitution.

Two centuries ago, the Framers recognized the need for the federal courts to vigilantly safeguard rights against the parochialism of the States. In The *Federalist No. 80*, Alexander Hamilton used the example of claims to land under grants of different States to underscore the need for diversity jurisdiction:

> The courts of neither of the granting states could be expected to be unbiased. The laws may have even prejudged the question, and tied the courts down to decisions in favour of the grants of the state to which they belonged. And even where this had not been done, it would be natural that the judges, as men, should feel a strong predilection to the claims of their own government.

THE FEDERALIST NO. 80 (Alexander Hamilton), *reprinted in* II THE DEBATE ON THE CONSTITUTION 476, 479-80 (Library of America 1993). Justice Story elaborated in *Martin v. Hunter's Lessee*, 14 U.S. (1 Wheat.) 304, 347 (1816):

> The constitution has presumed (whether rightly or wrongly we do not inquire), that state attachments, state prejudices, state jealousies, and state interests, might sometimes obstruct, or control, or be supposed to obstruct or control, the regular administration of justice.

To be sure, the insularity of the States has generally tempered over the years, and the concerns that led to the development of diversity jurisdiction are not wholly present here. Nevertheless, the principle remains the same. The Court "cannot leave to the States the formulation of the authoritative laws, rules, and *remedies designed to protect people from infractions by the States of federally guaranteed rights*." *Chapman v. California*, 386 U.S. 18, 21 (1967)

(emphasis added). *See* William J. Quirk & C. Rhett Shaver, *Does Congress Put Federalism at Risk When it Limits the States' Power to Tax?*, 166 State Tax Today 27 (Aug. 27, 2001).

The States should not be permitted to thwart the judgments of this Court by creating one excuse after another for refusing to return to taxpayers what the States had no right to take in the first instance. Unless the Court mandates meaningful relief—the immediate refund of the unlawfully collected taxes—the States will continue to have an incentive to creatively interpret their statutes to deny relief for taxpayers deprived of their property—to "roll the dice" with the constitutional rights of taxpayers, knowing that, at worst, they may have to mend their ways in the future.

In the final analysis, this case is about more than the affected taxpayers' entitlement to the tax dollars that Hennepin and Dakota Counties had no authority to extract from them. It is about the legitimacy and vitality of this Court's decisions. It is time for this Court to say that enough is enough. It is time to reject the States' beguiling interpretations of state law, distended readings of the Constitution, and facile efforts to vitiate this Court's mandates. It is time to halt their efforts to treat taxpayers' constitutional rights as unwelcome guests at a dinner party, thinking that if they simply ignore them, they will go away. It is time to say, once again—and to demonstrate by the force of its decision—"[t]he time for toleration has come to an end." *Griffith v. Kentucky*, 479 U.S. at 323 (quoting *United States v. Johnson*, 457 U.S. 537, 555-56 n.16 (1982)).

CONCLUSION

For the foregoing reasons, this Court should grant a writ of certiorari, reverse the decision of the Supreme Court of Minnesota, and order the Counties to refund the taxes they unlawfully collected from the Petitioners.

Respectfully submitted,

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February 19, 2002

Supreme Court, U.S.
FILED
JAN 27 2002
CLERK

No. 01-1061

In the Supreme Court of the United States

PROGRAMMED LAND, INC., ET AL.,

Petitioners,

v.

PATRICK O'CONNOR, IN HIS CAPACITY AS TREASURER AND AUDITOR FOR HENNEPIN COUNTY, MINNESOTA, ET AL.,

Respondents.

On Petition for a Writ of Certiorari to the Supreme Court of Minnesota

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REPLY BRIEF FOR PETITIONERS

In the petition, we explained that the decision below is inconsistent with fundamental requirements of due process. The respondent counties demanded excessive property tax payments while offering petitioner taxpayers no meaningful opportunity to determine that the amounts demanded were incorrect. The court below then held that the time for challenging these illegal taxes had expired before petitioners possibly could have discovered the error. That court went on to engage in a "bait and switch," holding that petitioners could not assert a common law refund action that had been available in Minnesota for 100 years.

In their briefs in opposition, the counties entirely fail to come to grips with these points. They make no attempt to defend the constitutional analysis used by the Minnesota Supreme Court; to the contrary, their principal argument rests on an assertion that actually was *rejected* by the court below. The counties also do not dispute that petitioners reasonably relied on the existence of common law remedies that were pulled out from under them by the Minnesota Supreme Court. And the counties do not deny the very considerable practical significance of this case. In these circumstances, the counties have not advanced any plausible reason for this Court to deny review.

1. The counties recognize, as they must, that taxing authorities are obligated to offer taxpayers a meaningful opportunity to contest illegal taxes. Because the court below held that the time for seeking a property tax refund under Minnesota law expires almost simultaneously with the mailing of tax bills, the counties also recognize that, to comport with due process requirements, taxpayers in the State must be given notice from which they can determine the invalidity of the

amount demanded.[1] The court below held this requirement satisfied here because, some months ahead of the filing date, Minnesota taxpayers receive an estimate of the amount of tax due and may "inquire as to the basis of the tax and then challenge it if the taxpayer believes it was calculated improperly." Pet. App. 21a. Thus, as we explain in the petition, the holding below is that, even though Minnesota law explicitly allows taxpayers to rely upon the correctness of their property tax bills, taxpayers nevertheless are on a sort of perpetual inquiry notice that the wrong rates may be applied. Under that holding, taxpayers waive their rights to challenge illegal taxes unless – prior to receiving their tax bills and without any reason to believe that taxing authorities plan to act illegally – the taxpayers contact tax officials, determine the rate those officials plan to use in calculating the tax, and file suit to contest an error. See Pet. 16-17.

The counties make no attempt to defend this remarkable holding. Instead, their principal argument against review is that the notices sent to taxpayers in fact *did* allow them to determine at a glance that the wrong rate would be used by tax officials to calculate the amount of tax demanded. To establish this point,

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[1] The Minnesota Supreme Court acknowledged that tax bills "must be sent out no later than March 31 of the year in which taxes are due" (Pet. App. 20a) – which is to say, the bills may be mailed on *the very day* that the time for filing a challenge under Minn. Stat. § 278.01 expires. Hennepin County (but not Dakota County) now states that its bills "were mailed to taxpayers between seventy-three and thirteen days before the deadline for filing tax petitions." Hennepin Br. 8-9. Needless to say, mailing bills that offer no way to determine use of an illegal rate two weeks (or two months) before the expiration of the challenge deadline does not offer taxpayers a meaningful opportunity to contest wrongful deprivations of property. For its part, Dakota County does not deny that taxpayers may have received their tax bills after the challenge deadline passed; that county observes only that tax bills "must be sent to the taxpayers by March 31 of the year taxes are due." Dakota Br. 3.

the counties declare that the various notices sent to taxpayers identified properties as "commercial" or "industrial," and that the notices sent to owners of properties that would receive the special, favorable rate also contained the words "low-rate" or "preferred." Hennepin Br. 1, 4, 8, 11; Dakota Br. 9. Therefore, the counties assert, "[i]t *was* possible from the words used on the bills and notices to know whether the assessor determined the property received the commercial low class or commercial regular class [rate]," and making this determination "would have taken [the taxpayer] seconds." Hennepin Br. 8, 11 (emphasis in original); Dakota Br. 9.

The counties made this same factual argument to the Minnesota Supreme Court (see Minn. Sup. Ct. Hennepin Reply Br. 2-3; Minn. Sup. Ct. Dakota Reply Br. 9-10) – which did *not* accept it. To the contrary, that court candidly acknowledged that "the notices [sent to taxpayers] did *not* contain information from which [petitioners] could determine that the counties applied the wrong class rate." Pet. App 7a. In this, the Minnesota court plainly was correct. Because there was no separate statutory classification in Minnesota for properties entitled to the low rate, and because the "preferred" nomenclature used in the counties' briefs does not appear in any statute – or, for that matter, in any county publication or guide that is generally available to taxpayers – petitioners *would have had no way to know* that the omission of the term "preferred" or "low-rate" from their notices signified denial of the proper rate. Needless to say, taxing authorities plainly do not provide adequate notice by speaking in a sort of secret code that cannot be deciphered by even extraordinarily diligent taxpayers.

The counties thus make no attempt to defend the constitutional analysis used by the court below. Instead, they premise their case on a factual contention that the Minnesota Supreme Court itself rejected. In these circumstances, further review of the due process question actually decided by the Minnesota court is warranted.

2. The remaining due process arguments advanced by the counties are wholly insubstantial. *First*, Dakota County contends that its system must provide adequate notice because "[p]etitioners did file their tax petition in time to challenge the 'assessment process' for taxes owed in 1994." Dakota Br. 3; see *id.* at 5. It is true that one petitioner – out of the more than 1600 whose claims are now before the Court – was able to advance his claim as to a single tax year (out of the six at issue before the Court) within the Minn. Stat. § 278.01 deadline. But this hardly makes the counties' case. As we explained in the petition (at 7-8), this one fortunate petitioner was informed of the error by an independent tax representative who happened to uncover it while conducting an audit of Dakota County's tax records. The possibility that errors may be discovered by tax professionals when they root through county files surely does not mean that the counties provide meaningful and adequate notice to taxpayers.

Second, Dakota County also asserts that Minnesota taxpayers have many opportunities to challenge illegal taxes. Dakota Br. 10-11, 12-13. As we explained in the petition (at 18 n.11), however, the mechanisms cited by the county all either must be invoked prior to the March 31 deadline (when taxpayers would have had no opportunity to discover the illegality) or are wholly discretionary with county tax officials. Dakota County makes no response to these points.

Third, Dakota County plainly is wrong in contending that the decision below rested on adequate state law grounds. Dakota Br. 6. Of course, the Minnesota Supreme Court's holding that Minn. Stat. § 278.01 governs here involves a state law determination that is not reviewable in this Court. But our argument is an entirely different one: accepting this state law holding, we maintain that § 278.01, as construed and applied by the Minnesota Supreme Court, is inconsistent with the U.S. Constitution. That federal law argument was considered and rejected by the court below. See Pet. App. 19a-22a.

Fourth, Hennepin County contends that this case is "moot for taxes after 1997" because the Minnesota legislature has prospectively eliminated the dual-rate treatment for commercial and industrial property that gave rise to petitioners' tax challenge. Hennepin Br. 1, 9. But this argument misses the point. Petitioners' entitlement to refunds for the tax years at issue in this litigation is unaffected by the legislation. And the due process issue presented here – concerning the constitutional adequacy of notice in circumstances where the state offers taxpayers no mechanism by which they may determine and remedy illegality in the tax assessment process – can arise in a wide array of settings. Minnesota's limited statutory change therefore does not at all diminish the importance of review.

3. In arguing against review of the equal protection issue presented in the petition, the counties maintain that differential treatment of identically situated taxpayers that is attributable to "bureaucratic error" may not give rise to a constitutional violation. Hennepin Br. 12-13; Dakota Br. 8-9. But the counties' attempts to distinguish this Court's relevant equal protection decisions are unavailing. Hennepin County contends that *Village of Willowbrook* v. *Olech*, 528 U.S. 562 (2000), is inapposite here because the differential treatment in that case allegedly was attributable to "'vindictive action' on the part of government officials." Hennepin Br. 12. In fact, however, the Court held that the allegation of "'irrational and wholly arbitrary'" government conduct was sufficient to state an equal protection complaint "quite apart from the Village's subjective motivation." 525 U.S. at 565. Compare *id.* at 565-566 (Breyer, J., concurring in the result) (hinging result on subjective "'ill will'"). Similarly, Hennepin County maintains that *Logan* v. *Zimmerman Brush Co.*, 455 U.S. 42 (1982), is distinguishable because that case was decided on due process grounds. Hennepin Br. 13. But while the majority opinion in *Logan* did find a due process violation, six Justices, in two separate opinions, also concluded that differential treatment attributable to "bureaucratic oversight" is inconsistent with equal protection

requirements. See Pet. 24. The counties do not address this point.[2]

For the foregoing reasons and the reasons stated in the petition, the petition for a writ of certiorari should be granted.

Respectfully submitted.

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FEBRUARY 2002

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[2] Hennepin County also asserts that petitioners' equal protection claims are time-barred because they were not filed pursuant to Minn. Stat. § 278.01 by the March 31 deadline. Hennepin Br. 13-14. As we noted in the petition, however, the Minnesota Supreme Court expressly declined to decide whether that deadline governed petitioners' equal protection claims, instead choosing to resolve the merits of the constitutional question. See Pet. 22-23 & n.14. The availability of a state or federal statutory remedy would be addressed on remand if this Court were to set aside the Minnesota Supreme Court's equal protection ruling.